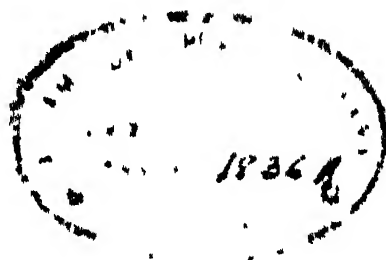


A HAND BOOK OF CRIMINAL LAW

EVIDENCE PROCEDURE & PRACTICE

CONTAINING THE INDIAN PENAL CODE,
THE INDIAN EVIDENCE ACT, THE CODE
OF CRIMINAL PROCEDURE AND THE
CRIMINAL RULES OF PRACTICE WITH
ALL AMENDMENTS AND CASE LAW
UP TO 1931

REFERENCE
Not to be lent out



BY

V. S. KRISHNAMURTI, M.A. LONDON
OF LINCOLN'S INN BARRISTER-AT-LAW.

REFERENCE
Not to be lent out



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DEDICATED
BY KIND PERMISSION
TO
THE HON'BLE SIR LIONEL LEACH Kt., BARRISTER-AT-LAW
CHIEF JUSTICE
OF
HIS MAJESTY'S HIGH COURT OF JUDICATURE AT MADRAS
AS A HUMBLE TOKEN OF
THE ESTEEM, REGARD AND GRATITUDE
OF
THE AUTHOR

PREFACE

Since the publication of the last edition of this Handbook of Criminal Law, a number of amendments have been brought about by the Government of India (Adaptation of Indian Laws) Order, 1937 and Criminal Procedure and other Amendment Acts. These necessitate the publication of a Revised Edition of the Handbook. This edition has been brought up-to-date with amendments and latest and leading case-law as on July 1946.

An innovation in this Edition which, it is hoped, will be of immense use to the Practitioners, is the incorporation of the Criminal Rules of Practice that have been made by the High Court, brought up-to-date.

This publication lays no claim to originality. It is a simple attempt to present the three Major Enactments, *viz.*, The Indian Penal Code, The Indian Evidence Act and The Code of Criminal Procedure in a handy volume. It is designed to serve as a reliable desk-book of every-day reference and the arrangement of matter and selection of type have been made only with that object in view.

The Editor is grateful to the High Court of Judicature at Madras for permission to incorporate in this publication extracts from the Criminal Rules of Practice and Orders.

The Editor expresses his deep gratitude and thanks to His Lordship the Chief Justice for having permitted His Lordship's name to be associated with this publication.

The Editor's thanks are due to Messrs. Vepa. P. Sarathy and P. Subramaniam for their help in bringing out this Edition and to Messrs. V. S. N. Chari & Co. for their care and expedition in seeing this book through the Press especially at a time of scarcity of paper and of printing materials.

BAR ASSOCIATION
HIGH COURT, MADRAS }
1st July, 1946

S. KRISHNAMURTI.

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THE
Indian Penal Code

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THE INDIAN PENAL CODE

(ACT No. XLV OF 1860¹)

CHAPTER I.

INTRODUCTION.

Preamble.

WHEREAS it is expedient to provide a gen^{al} Penal Code for British India, It is enacted as follows.—

Title and extent
of operation of the
Code.

1. This Act shall be called the Indian Penal Code, and shall take effect² throughout ¹[British India].

Punishment of
offences committed
within British
India

2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within ³[British India].

Punishment of
offences committed
beyond, but which
by law may be tried
within, British
India.

3. Any person liable, by any ⁴[Indian Law], to be tried for an offence committed beyond ⁵[British India] shall be dealt with according to the provisions of this Code for any act committed beyond ³[British India] in the same manner as if such act had been committed within ³[British India].

Extension of Code
to extra-territorial
offences.

4. The provisions of this Code apply also to any offence committed by—

(1) any Native Indian subject of Her Majesty in any place without and beyond British India ;

(2) any other British subject within the territories of any Native Prince or Chief in India ;

(3) any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India ;

⁶[(4) any person on any ship or aircraft registered in British India wherever it may be.]

1. The Indian Penal Code has been declared in force, in the Chittagong Hill-tracts, in the Sonthal Parganas, in the Angul District, in the Khondmals District, in British Beluchistan, in Panth Piploda, in the following Scheduled Districts, namely, United Provinces Tarai Districts and the Districts of Hazaribagh, Lohardaga (now called the Ranchi District,) and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum. It has been extended to the Lushan Hills and to Berar.

2. The words and figures "on and from the first day of May, 1861," were repealed by the Amending Act, 1891 (12 of 1891).

3. These words were substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 2.—Code intended to be complete in itself. Matter outside cannot be invoked to add to it, 49 M. 725 (F.B.).

4. These words were substituted for the words "law passed by the Governor General of India in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937,

5. These words were substituted for the words "the limits of the said territories," *ibid.*

6. This clause was inserted by S. 2 of the Offences on Ships and Aircraft Act, 1940 (4 of 1940).

Explanation.—In this section the word “offence” includes every act committed outside British India which, if committed in British India, would be punishable under this Code.

Illustrations.

(a) A, a coolie, who is a Native Indian subject, commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found.

(b) B, a European British subject, commits a murder in Kashmir. He can be tried and convicted of murder in any place in British India in which he may be found.

(c) C, a foreigner who is in the service of the Punjab Government, commits a murder in Hind. He can be tried and convicted of murder at any place in British India in which he may be found.

(d) D, a British subject living in Indore, instigates E to commit a murder in Bombay. D is guilty of abetting murder.

5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 and 4 William IV, Chapter 85, or of any Act of Parliament passed after that Statute in anywise affecting the East India Company or 1[British India] or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of officers 2[soldiers, 3[sailors] or airmen] in the service of Her Majesty or of any special or local law.

Certain laws not to be affected by this Act.

CHAPTER II

GENERAL EXPLANATIONS.

6. Throughout this Code every definition of an offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled “General Exceptions,” though those exceptions are not repeated in such definition, penal provision or illustration.

Definitions in the Code to be understood subject to exceptions.

Illustrations.

(a) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) A, a police-officer, without warrant, apprehend Z who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore, the case falls within the general exception which provides that “nothing is an offence which is done by a person who is bound by law to do it.”

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

Sense of expression once explained,

Gender.

8. The pronoun “he” and its derivatives are used of any person, whether male or female.

9. Unless

the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

Number.

1. These words were substituted for the words “the said territories” by the Government of India (Adaptation of Indian Laws) Order 1937.

2. These words were substituted for the words “and soldiers” by S. 2 and First Schedule to the Repealing and Amending Act, 1927 (10 of 1927).

3. This word was inserted by S. 2 and Schedule of the Amending Act, 1934 (35 of 1934).

"Man,"
"Woman" 10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

"Person" 11. The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

"Public" 12. The word "public" includes any class of the public or any community.

"Queen" 13. The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"Servant of the Queen." 14. The words "servant of the Queen" denote all officers or servant continued, appointed or employed in India by or under the authority of [the Government of India Act, 1937 or by or under the authority of any Government in British India or of the Crown Representative].

15. [Definition of "British India".] Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.

16. [Definition of "Government of India".] Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.

"Government." 17. The word "Government" denotes the person or persons authorized by law to administer executive Government in any part of British India.

18. [Definition of "Presidency".] Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.

"Judge." 19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(a) A Collector exercising jurisdiction in a suit under Act X of 1859, is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment with or without appeal, is a Judge.

(c) A member of a panchayat which has power, under Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.

(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

1. These words were substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 19.—An election officer, is a Judge when he removes names from electoral roll, 1937 M.W.N. Cr. 16. Legal proceeding is one regulated or prescribed by law in which a judicial decision may or must be given, A.I.R. 1929 Mad. 175.

20. The words "Court of Justice" denote a Judge "Court of Justice", who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration

A Panchayat acting under ¹Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

21. The words "public servant" denote a person "Public servant", falling under any of the descriptions hereinafter following, namely:—

First.—every covenanted servant of the Queen ;

Second.—Every Commissioned Officer in the Military, ²[Naval or Air] Forces of the Queen while serving under ³[any Government in British India or the Crown Representative];

Third.—Every Judge ;

Fourth.—Every Officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court ; and every person specially authorized by a Court of Justice to perform any of such duties ;

Fifth.—Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant ;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority ;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

Eighth.—Every officer of ⁴[the Crown] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience ;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of ⁴[the Crown], or to make any survey, assessment or contract on behalf of ⁴[the Crown], or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of ⁴[the Crown] or to make, authenticate or keep any document relating to the pecuniary interests of ⁴[the Crown], or to prevent the infraction of any law for the protection of the pecuniary interests of ⁴[the Crown], and every officer in the service or pay of ⁴[the Crown] or remunerated by fees or commission for the performance of any public duty.

1. Madras Regulation 7 of 1816 has been repealed by the Madras Civil Courts Act, 1873 (8 of 1873).

2. These words were substituted for the words "or Naval" by S. 2 and First Schedule of the Repealing and Amending Act, 1927 (10 of 1927).

3. These words were substituted for the words "the Government of India or any Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. These words were substituted for the word "Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

1[*Eleventh.*—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election.]

Illustration.

A Municipal Commissioner is a public servant.

Explanation. 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation. 2. Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

2[*Explanation. 3.*—The word “election” denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.]

22. The words “moveable property” are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

23. “Wrongful gain” is gain by unlawful means of property to which the person gaining is not legally entitled.

“Wrongful loss.” “Wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

24. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly.”

1. This entry was inserted by S. 2 of the Indian Elections Offences and Inquiries Act, 1920 (89 of 1920).

2. This Explanation was added, *ibid.*

S. 21.—These are held to be “public servants”: A chairman of a Union Panchayat Board, 1916 M.W.N. 381; A P.W.D. Laskar, 48 M. 867; A member of a Taluk Board, 52 M. 446; An agent of the S.P.C.A. 46 M. 90; A Bill Collector of a Union Board, 1936 M.W.N. Cr. 122. A S.I. of Police belonging to the Finger Print Bureau, 39 J.C. 344. A Talayari, 1948 M.W.N. Cr. 192. Sales-Offices of Co-operative Society executing decrees, 1942 M.W.N. 375 Cr. 79. These are held not to be public servants, A Sanitary Inspector of Panchayat Boards, 1939 M.W.N. Cr. 65; President of Co-operative Society, 1935 M.W.N. Cr. 241.

S. 22.—“Earth” severed from “the earth” is moveable property, 27 M. 531.

S. 23.—S. 425 of the Code.

S. 24.—Dishonestly, used in the following Sections 209, 246, 247, 378, 383, 403, 404, 405, 411, 412, 415, 420, 421, 422, 423, 424, 461, 462, 464, 471, 474, 477, 496.

25. A person is said to do a thing "*fraudulently*" if he "*Fraudulently.*" does that thing with intent to defraud but not otherwise.

26. A person is said to have "*reason to believe*" a "*Reason to believe.*" thing if he has sufficient cause to believe that thing but not otherwise.

27. When property is in the possession of a person's Property in pos-
session of wife, wife, clerk or servant, on account of that person, it is in
clerk or servant. that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk, or servant, is a clerk or servant within the meaning of this section.

28. A person is said to "*counterfeit*" who causes one thing to resemble another thing, intending by means of that resemblance to "*Counterfeit.*" practice deception, or knowing it to be likely that deception will thereby be practised.

[Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.]

[Explanation 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.]

29. The word "*document*" denotes any matter expressed or described "*Document.*" upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A Power-of-Attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

S. 25.—Fraudulently used in the following sections; 205 to 210, 239, 240, 242, 243, 246, 247, 250, 261, 262, 263, 264, 265, 266, 415, 421 to 424, 464, 471, 474, 477.

1. This Explanation was substituted for the original Explanation by s. 9 of the Metal Tokens Act, 1889 (1 of 1889).

S. 29.—See s. 3 of the Indian Evidence Act, 1872 : s. 3 (16) of the General Clauses Act, 1897.

30. The words "valuable security" denote a document which is, or "Valuable security." purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

"A will."

31. The words "a will" denote any testamentary document.

Words referring to acts include illegal omissions.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

"Act."

"Omission."

33 The word "act" denotes as well a series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

1[34. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.]

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

Co-operation by doing one of several acts constituting an offence.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations.

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

1. This section was substituted for the original section by s. 1 of the Indian Penal Code Amendment Act, 1870 (27 of 1870).

S. 34.—Explained : 52 Cal. 197 (P. C.) Common Intention implies a pre-arranged plan, 1945 M.W.N. Cr. 70 (P. C.). Section applies only to those who participate in the offences, 1936 M.W.N. Cr. 25, Real Test of common intention, 1923 M.W.N. 101. Disjunct individual act, must be proved, 1922 M.W.N. 800. Common object and common intention distinguished, 1925 M.W.N. 96 (P.C.) Common intention alone sufficient, 1929 M.W.N. 181. Distinction between S. 114 and S. 34; 11 R. 854.

(b) A and B are joint jailors, and as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c) A, a jailor, has the charge of Z, a prisoner. A intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B, A is guilty only of an attempt to commit murder.

Persons concerned in criminal act may be guilty of different offences.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

39. A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means "Voluntarily". which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating robbery and thus causes the death of a person. Here, A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

1[40. Except in the ²[chapters] and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

"Offence."

In Chapter IV, ³[Chapter VA] and in the following sections, namely, sections 464, 465, 466, 467, 471, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216, and 441 the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.]

41. A "special law" is a law applicable to a particular subject.

"Special law."

42. A "local law" is a law applicable only to a particular part of British India.

"Local law."

1. This section was substituted for the original S. 40 by S. 2 of the Indian Penal Code Amendment Act, 1870 (27 of 1870).

2. This word was substituted for the word "Chapter" by S. 2 and Schedule I of the Repealing and Amending Act, 1930 (8 of 1930).

3. This word, figure and letter were inserted by S. 2 of the Indian Criminal Law Amendment Act, 1913 (8 of 1913).

4. The figures 64, 65, 66 and 71 were inserted by S. 1 of the Indian Penal Code Amendment Act, 1881 (8 of 1881), and the figures 67 by S. 21 (1) of the Indian Criminal Law Amendment Act, 1886 (10 of 1886).

43. The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do," whatever it is illegal in him to omit.

"Injury."

44. The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

"Life,"

45. The word "life" denotes the life of a human being unless the contrary appears from the context.

"Death,"

46. The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Animal,"

47. The word "animal" denotes any living creature, other than a human being.

"Vessel."

48. The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

49. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

50. The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

52. Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

1[52-A. Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.]

CHAPTER III.

OF PUNISHMENTS.

53. The punishments to which offenders are liable under the provisions of this Code are.—

First.—Death;

Secondly.—Transportation;

Thirdly.—Penal servitude;

Fourthly.—Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is, with hard labour; (2) Simple;

S. 52.—Contrast with definition in S. 3 (20) General Clauses Act, 1897.

1. This section was inserted by S. 2 of the Indian Penal Code (Amendment) Act, 1942 (8 of 1942).

S. 53.—Imprisonment till the rising of court is valid, 1945 M.W.N. Cr. 83. Disqualification for holding licence under Motor Vehicles Act, 1939 is not a punishment, 1944 M.W.N. Cr. 162 (1).

Fifthly.—Forfeiture of property ;

Sixthly.—Fine.

54. In every case in which sentence of death shall have been passed,
Commutation of sentence of death. ¹[the Central Government or the Provincial Government of the Province] within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

55. In every case in which sentence of transportation for life shall have been passed, ¹[the Provincial Government of the Province] within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

²[**55.A.** Nothing in section fifty-four or section fifty-five shall derogate from the right of His Majesty, or of the Governor-General if any such right is delegated to him by His Majesty to grant pardons, reprieves, respites or remissions of punishment.]
Saving for Royal prerogative.

56. Whenever any person being an European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude instead of transportation according to the provisions of ³Act XXIV of 1855
Sentence of Europeans and Americans to penal servitude.

⁴[Provided that, where an European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.]
Proviso as to sentence for term exceeding ten years but not for life.

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.
Fractions of terms of punishment.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt within the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.
Offenders sentenced to transportation, how dealt with until transported

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.
Transportation instead of imprisonment

S. 55.—Sentence of transportation for life unless commuted, does not necessarily mean imprisonment for 14 years, 1945 M.W.N. Cr. 40.

1. These words were substituted for the words "the Government of India or the Government of the place" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. This section was inserted, *ibid.*

3. The Penal Servitude Act, 1855.

4. This proviso was added by S. 3 of the Indian Penal Code Amendment Act, 1870 (27 of 1870).

S. 59.—41 Mad. 297 (P.C.).

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

61. [Sentence of forfeiture of property.] Repealed by s. 4 of Act XVI of 1921.

62 [Forfeiture of property, in respect of offenders punishable with death, transportation or imprisonment.] Repealed by S. 4 of Act XVI of 1921.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Sentence of imprisonment for non-payment of fine.

64. ¹[In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable ²[with imprisonment or fine, or] with fine only, in which the offender is sentenced to a fine],

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence. if the offence be punishable with imprisonment as well as fine.

Description of imprisonment for non-payment of fine.

66 The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

67. If the offence be punishable with fine only, ³[the imprisonment which the Court imposes in default of payment of the fine shall be simple. and] the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four

1. These words were substituted for the words "In every case in which an offender is sentenced to a fine" by S. 2 of the Indian Penal Code Amendment Act, 1882 (10 of 1882).

2. These words were inserted by S. 21 (2) of Indian Criminal Law Amendment Act, 1886 (10 of 1886).

S. 64.—Sentence of imprisonment in default of fine cannot be concurrent with a substantive sentence of imprisonment. I.L.R. 1939 B. 160.

S. 65.—1984 M.W.N. 247 Cr. 47.

3. These words were inserted by S. 3 of the Indian Penal Code Amendment Act, 1882 (8 of 1882).

S. 67.—This scale refers only to fines actually imposed and not to the maximum imposable. 1942 M.W.N. 427 Cr. 99.

months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

Imprisonment to terminate on payment of fine.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

Termination of imprisonment on payment of proportional part of fine.

69. If before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment. A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonments, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Fine leviable within six years, or during imprisonment.

Death not to discharge property from liability.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such offences, unless it be so expressly provided.

Limit of punishment of offence made up of several offences.

1[Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.]

1. This clause was added by s. 4 of the Indian Penal Code Amendment Act, 1882 (8 of 1882)

S. 71. Separate sentences for offences under S. 457 & S. 380 valid I. L. R. 1944 M. 894. Separate sentences for offences under Ss. 326, 397 are illegal, 1915 M.W.N. 544. Separate sentences under S. 147 and 323 are illegal, 1927 M.W.N. 850; 1933 M.W.N. Cr. 207; except where causing of the hurt is not itself force or violence in rioting, 56 M. 481. Separate sentences for rioting and hurt, read with S. 149 are illegal, 57 M. 643; 1934 M.W.N. Cr. 118; 1935 M.W.N. Cr. 119; 1936 M.W.N. Cr. 240; 1939 M.W.N. Cr. 93. Separate sentences for offences under Ss. 279 and 338 are illegal 1935 M.W.N. Cr. 160; Separate sentences under S. 323 and S. 325 for a single blow are illegal, 1933 M.W.N. 36; in the course of a beating illegal. 1937 M.W.N. Cr. 133, under Ss. 353 and S. 355 for a single act, illegal, 1931 M.W.N. Cr. 142. Offence of picketing under Cr. Law Amendment Act, S. 17 (5) and under Ordinance V of 1932 punishable with one sentence only, 1933 M.W.N. Cr. 94. Separate sentence for offence under S. 75 illegal, 1936 M.W.N. 752 Cr. 147 (2).

Illustrations.

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

Solitary confinement.

a time not exceeding one month if the term of imprisonment shall not exceed six months ;

a time not exceeding two months if the term of imprisonment shall exceed six months and ¹[shall not exceed one] year :

a time not exceeding three months if the term of imprisonment shall exceed one year.

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Limit of solitary confinement.

Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.

²[**75.** Whoever, having been convicted.—

(a) by a Court in British India, of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, or

S. 72.—Charging under several offences see S. 236 CrI. P. Code.

1. These words were substituted by S. 5 of the Indian Penal Code Amendment Act, 1882 (8 of 1882).

2. This Section was substituted for the original section by the Indian Penal Code Amendment, Act, 1910 (8 of 1910).

S. 75.—Long interval between the last punishment and the commission of the offence is a consideration for reduction under this section. 53 M. 80; 1935 M.W.N. 1091 Cr. 194; 1985 M.W.N. 1294 Cr. 288. A previous conviction of a non-British Indian Court cannot be proved in British Indian court for enhancement of sentence, 1980 M.W.N. 173 Cr. 29, 58 Madras 707. A proof or admission by the accused for commission of the previous offence essential, 52 M. 795. Section does not provide for a separate sentence but only for an enhanced sentence. 1936 M.W.N. 752 Cr. 147. There is no invariable rule that sentence should be more severe than the previous one, 59 M. 995. Also 1937 M.W.N. 737 Cr. 161. No incommensurate punishment for a trivial offence under this section, 1932 M.W.N. 1259 Cr. 191; 1935 M.W.N. 477 Cr. 98; 1985 M.W.N. 1062 Cr. 190. This does not apply to an offence under section 511; 1942 M.W.N. 376 Cr. 80. 1942 M.W.N. 297 Cr. 65. A charge under this section must be specifically included and put to the accused, 1943 M.W.N. 126 Cr. 14.

(b) by a Court or tribunal [in any Indian State acting under the general or special authority of the Central Government or of the Crown Representative], of an offence which would, if committed in British India, have been punishable under those Chapters of this Code with like imprisonment for the like term.

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to transportation for life, or to imprisonment of either description for a term which may extend to ten years.]

CHAPTER IV.

GENERAL EXCEPTIONS.

Act done by a person bound, or by mistake of fact believing himself bound, by law.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustration.

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y. and after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done by a person justified, or by mistake of fact believing himself justified by law.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murders in the act seizes Z in order to bring Z before the proper authorities, A has committed no offence although it may turn out that Z was acting in self-defence.

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

1. These words were substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 79.—This operates only at the close of the trial when all facts had been proved. 1932 M.W.N. 1225 Cr. 253. Mistake of fact can be pleaded only if the act which would otherwise be an offence ceases to be an offence, 1937 M.W.N. 22 Cr. 6.

Illustration.

A is at a work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

Act likely to cause harm, but done without criminal intent and to prevent other harm.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

Act of a child under seven years of age.

82. Nothing is an offence which is done by a child under seven years of age.

Act of a child above seven and under twelve of immature understanding.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

84. Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

84. Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

S. 84.—M'Naughten's, case 1843 10 Cl. and F. 200. Insanity must be proved on the date of the commission of offence. 38 M. 550. Absence of motive may be evidence of insanity. 1925 M.W.N. 649. Burden of proof is on the accused though not higher than civil proceedings. 1986 M.W.N. 1248 Cr. 220 (P.O.). Poojari killing child to appease Goddess—no insanity, 1981 M.W.N. 719 Cr. 149. The mere fact that an offence was committed of sudden impulse is not sufficient plea under this section. 1985 M.W.N. 584 Cr. 97. Accused must prove at the time of killing he had unsound mind incapable of knowing the nature of his act. 1940 M.W.N. 963 Cr. 127. Difference between section 84 and 86 I.L.R. 1939 M. 358.

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

87. Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death, or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Act not intended and not known to be likely to cause death or grievous hurt, done by consent.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

88. Nothing, which is not intended to cause death is, an offence by reason of any harm, which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Act not intended to cause death, done by consent in good faith for person's benefit.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under the painful complaint but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z with Z's consent. A has committed no offence.

89 Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person: Provided—

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt; or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

S. 86.—*Ree vs. Beard*, 1920 A.C. 479. Correct test is whether accused was incapable of forming an intention or knew what he was doing was wrong or able to appreciate nature and quality of his act. 1931 M.W.N. 113 Cr. 9, 88 M. 479.

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception, or

Consent known to be given under fear of misconception.

if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of insane person.

Unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Consent of child.

Exclusion of acts which are offences independently of harm caused.

91. The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided—

Act done in good faith for benefit of a person without consent.

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Provisos.

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

S. 90.—The expression misconception of fact includes all cases whether the consent is obtained by misrepresentation, 86 M. 453.

Illustrations.

(a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A not intending Z's death but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the housetop, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration.

A, a surgeon, in good faith communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

94. Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Of the Right of Private Defence.

Things done in private defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

S. 94.—See 1912 M.W.N. 1108.

S. 96.—Omission of plea not fatal. A.I.R. 1927 M. 97; onus is on accused to prove, 1940 M.W.N. Cr. 172.

Right of private
defence of the body
and of property.

97 Every person has a right, subject to the restrictions contained in section 99, to defend—

First.—His own body, and the body of any other person, against any offence affecting the human body ;

Secondly.—The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

98. When an act, which would otherwise be a certain offence, is not

Right of private
defence against the
act of a person of
unsound mind, etc.

that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has

the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(a) Z, under the influence of madness, attempts to kill A ; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

99. There is no right of private defence against an act which does not

Acts against
which there is no
right of private
defence.

reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which
the right may be
exercised.

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

S. 97.—Section applies to Arms Act 1935 M.W.N. Cr. 246 ; anticipation of injury in rioting not self defence 1943 M.W.N. Cr. 42

S. 99.—No right of private defence against officials acting in good faith 1937 M.W.N. Cr. 165 ; 1939 M.W.N. Cr. 152.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :—

When the right of private defence of the body extends to causing death.

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault ;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault ;

Thirdly.—An assault with the intention of committing rape ;

Fourthly.—An assault with the intention of gratifying unnatural lust ;

Fifthly.—An assault with the intention of kidnapping or abducting ;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99 to the voluntary causing to the assailant of any harm other than death.

When such right extends to causing any harm other than death.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed ; and it continues as long as such apprehension of danger to the body continues.

Commencement and continuance of the right of private defence of the body.

103. The right of private defence of property extends, under the restrictions mentioned in the section 99, to the voluntary causing of death or of any other harm to the wrong-doer if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated namely :—

When the right of private defence of property extends to causing death.

First.—Robbery ;

Secondly.—House-breaking by night ;

Thirdly.—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property ;

Fourthly.—Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

S. 100.—Limits of private defence, 1929 M.W.N. Cr. 97; 1937 M.W.N. Cr. 128; True principles applicable, 1935 M.W.N. Cr. 158. Helping another to maintain possession is self defence. 1942 M.W.N. Cr. 10.

104. If the offence, the committing of which, or attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

When such right extends to causing any harm other than death.

105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

Right of private defence against deadly assault when there is risk of harm to innocent person.

106. If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offences if by so firing he harms any of the children.

CHAPTER V.

OF ABETMENT.

Abetment of a thing.

107. A person abets the doing of a thing, who—

First.—Instigates any person to do that thing ; or,

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

S. 105.—See *R. V. Hussey*, 19 Cril. Appeal Reports 160.

S. 107.—A person knowingly aiding disposal of stolen property is an abettor under S. 411, 58 M. 86.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108. A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A with a guilty intention abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering A, instigates B a child under seven years of age, to do an act which causes A's death. B in consequence of the abetment, does the act in the absence of A and thereby causes A's death. If B, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong, or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling house, and is liable to the punishment provided for that offence.

(d) A intending to cause a theft to be committed, instigates B to take property belonging to A out of A's possession. A induces B to believe that the property belongs to A. B takes the property out of A's possession in good faith, believing it to be A's property. B, acting under the misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration.

A consents with B a plan for poisoning. Z It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison: Z dies in consequence. Here though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in the section and is liable to the punishment for murder.

1[108-A. A person abets an offence within the meaning of this Code who, in British India, abets the commission of any act without and beyond British India which would constitute an offence if committed in British India.

Illustration.

A, in British India, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.]

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

1. This section was added by S. 3 of the Indian Penal Code Amendment Act, 1898 (4 of 1898).

S. 109. Failure to report to higher authorities about fellow clerk's offence is not *per se* abetment. 1938 M.W.N. 908: Cr. 160.

Liability of
abettor when one
act abetted and
different act done.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it :

Proviso.

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustrations.

(a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft: for the theft was a distinct act, and not a probable consequence of the burning.

(c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

Abettor when
liable to cumulative
punishment for act
abetted and for act
done.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely to voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Liability of abettor
for an effect
caused by the act
abetted different
from that intended
by the abettor

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z, dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114. Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Abettor present
when offence is
committed.

S. 114.—1925 M. W. N., 26 (P. C.) 53 M. L. J. 760; A.I.R. 1925 M. 364 A.I.R., 1927 M. 97; Meaning and Scope; 1912 M. W. N. 725. No evidence of previous conspiracy necessary. 1984. M. W. N. Cr. 103. Section only evidentiary and establishes rebuttable presumption. 1980 M.W.N. Cr. 180.

115. Whoever abets the commission of an offence punishable with death or transportation for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and, if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both,

and if the abettor or the person abetted is a public servant whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

117. Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

S. 116.—Illustration (a) A.I.R. 1930. M. 671; 51 M. 86, but no offence if offer is to public servant *functus officio* 1929 M.W.N. Cr. 143.

S. 117.—Instigating more than 10 persons to commit an offence under the Salt Act is an offence under this Section 1931 M. W. N. 494; Cr. 94—55 Mad. 90; So also instigating railway workers in a strike to lie on the rails. 1939. M. W. N. 1158; Cr. 229.

Illustration.

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

Concealing design to commit offence punishable with death or transportation for life.

118. Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or transportation for life,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design.

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

Public servant concealing design to commit offence which it is his duty to prevent.

119. Whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years;

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

Concealing design to commit offence punishable with imprisonment.

120. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design.

-shall if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

1 CHAPTER V-A.

CRIMINAL CONSPIRACY.

120.A. When two or more persons agree to do, or cause to be done,—

- (1) on illegal act, or
(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120.B. (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or transportation for life, ¹[and shall also be liable to fine].

Illustrations.

(a) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(b) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

1. Chapter V-A was inserted by S. 3 of the Indian Criminal Law Amendment Act, 1913 (8 of 1913).

2. These words were substituted by S. 2 of the Indian Penal Code (Amendment) Act, 1921 (16 of 1921).

120.A.—Proof of common object not enough for proof of conspiracy. Unlike offence under S. 743; 1938 M.W.N. Cr. 113. Section applies only where no substantive overt acts have been actually committed, 1937 M.W.N. 996 Cr. 212. Agreement not limited to commission of only a single act but to commission of many acts, 1936 M.W.N. 627 Cr. 116.

S. 121.—What constitutes, 1922 M.W.N. 71.

1 [121-A. Whoever within or without British India conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India ²[of British Burma] or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, ³[the Central Government or any Provincial Government or the Government of Burma], shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years, ⁴[and shall also be liable to fine.]

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.]

122. Whoever collects men, arms or ammunition or other wise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, ⁵[and shall also be liable to fine.]

123. Whoever, by any act, or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any ⁶[Province] ⁷* * * * or a Member of the Council of the Governor General of India, ⁸* * * * to exercise or refrain from exercising in any manner any of the lawful powers of such Governor General, Governor, ⁹* * * * or Member of Council,

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such Governor General, Governor, ⁹* * * * or Member of Council.

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

1. S. 121-A was inserted by S. 4 of the Indian Penal Code Amendment Act, 1870 (27 of 1870).

2. These words were inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. These words were substituted for the words "the Government of India or any Local Government," *ibid.*

4. These words were inserted by S. 3 of the Indian Penal Code (Amendment) Act, 1921 (16 of 1921).

5. These words were substituted by S. 2, *ibid.*

6. This word was substituted for the word " Presidency " by the Government of India (Adaptation of Indian Laws) Order, 1937.

7. The words " or a Lieutenant-Governor " were repealed, *ibid.*

8. The words " or of the Council of any Presidency " were repealed, *ibid.*

9. The word " Lieutenant-Governor " was repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.

1[124-A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, Her Majesty ²[or the Crown Representative] or the Government established by law in British India, ²[or British Burma] shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]

125. Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the Queen or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

128. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

1. The original S. 124A was repealed by S. 4 of the Indian Penal Code Amendment Act, 1898 4 of 1898).

2. These words were inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 124-A.—Interpretation of Section see I.L.R. 1942, Kar. 56 (F.C.) 37 M.L.J. 189 (P.C.)

129. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Public servant negligently suffering such prisoner to escape.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Aiding escape of rescuing or harbouring such prisoner.

Explanation.—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY, ¹[NAVY AND AIR FORCE,]

131. Whoever abets the committing of mutiny by an officer, soldier, ²[sailor or airman], in the Army, ³[Navy or Air Force] of the Queen, or attempts to seduce any such officer, soldier, ⁴[sailor or airman] from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetting mutiny or attempting to seduce a soldier, sailor or airman from his duty.

Explanation.—In this section the words “officer”, ⁵“soldier” ⁶“sailor” and “airman” include any person subject to the ⁷[Army Act, the Indian Army Act, 1911, ⁸[the Naval Discipline Act or that as modified by the Indian Navy (Discipline) Act, 1934], ⁹[the Air Force Act or the Indian Air Force Act, 1932], as the case may be].

132. Whoever abets the committing of mutiny by an officer, soldier, ²[sailor or airman], in the Army, ³[Navy or Air Force] of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment, of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of mutiny, if mutiny is committed in consequence thereof.

1. These words were substituted for the words “and Navy” by Section 2 and First Schedule of the Repealing and Amending Act, 1927 (10 of 1927).

2. These words were substituted for the words “or sailor”, *ibid.*

3. These words were substituted for the words “or Navy”, *ibid.*

4. This explanation was added by Section 6 of the Indian Penal Code Amendment Act 1870 (27 of 1870).

5. These words were substituted for the words “and soldier” by Section 2 and First Schedule of the Repealing and Amending Act, 1927 (10 of 1927).

6. This word was inserted by S. 2 and Schedule of the Amending Act, 1934 (35 of 1934).

7. These words and figures were substituted, *ibid.*

8. These words were inserted, *ibid.*

9. These words were substituted for the words “or the Air Force Act” by S. 130 and Schedule of the Indian Air Force Act, 1932 (14 of 1932).

133. Whoever abets an assault by an officer, soldier, ¹[sailor or airman], in the army ²[Navy or Air Force] of the Queen on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office.

134. Whoever abets an assault by an officer, soldier, ³[sailor or airman], in the Army, ⁴[Navy or Air Force] of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Abetment of such assault, if the assault is committed.

135. Whoever abets the desertion of any officer, soldier, ³[sailor or airman], in the Army, ⁴[Navy or Air Force] of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Abetment of desertion of soldier, sailor or airman

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, ³[sailor or airman], in the Army, ⁴[Navy or Air Force] of the Queen, has deserted, harbours such officer, soldier, ³[sailor or airman], shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Harbouring deserter.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the Army, ⁴[Navy or Air Force] of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Deserter concealed on board merchant vessel through negligence of master.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier, ³[sailor or airman] in the Army, ⁴[Navy or Air Force] of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Abetment of act of insubordination by soldier, sailor or airman.

138 A. [Application of foregoing sections to the Indian Marine service.] Rep. Act XXXV of 1934.

139. No person subject to ⁵[the Army Act], the Indian Army Act, 1911, the Naval Discipline Act ⁶[or that Act as modified by the Indian Navy (Discipline) Act, 1934] ⁷[the Air Force Act or the Indian Air Force Act, 1932] is subject to punishment under this Code for any of the offences defined in this Chapter.

Persons subject to certain Acts.

1. These words were substituted for the words "or sailor", *ibid.*
2. These words were substituted for the words "or Navy", *ibid.*
3. These words were substituted for the words "or sailor" by S. 2 and First Schedule of the Repealing and Amending Act, 1927 (10 of 1927).
4. These words were substituted for the words "or Navy", *ibid.*
5. These words and figures were substituted by Section 2 and First Schedule of the Repealing and Amending Act, 1927 (10 of 1927).
6. These words were inserted by S. 2 and Schedule of the Amending Act, 1934 (95 of 1934).
7. These words were substituted for the words "or the Air Force Act" by S. 130 and Schedule of the Indian Air Force Act 1932 (14 of 1932).

140. Whoever, not being a soldier, ⁴[sailor or airman] in the Military, ⁵[Naval or Air] service of the Queen, wears any garb or carries any token resembling any garb or token used by such a soldier ⁴[sailor or airman] with the intention that it may be believed that he is such a soldier, ⁴[sailor or airman], shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILITY.

141. An Assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, ⁶[the Central or any Provincial Government or Legislature], or any public servant in the exercise of the lawful power of such public servant ; or

Second.—To resist the execution of any law, or of any legal process ; or

Third.—To commit any mischief or criminal trespass, or other offence ; or

Fourth.—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

4. These words were inserted by S. 2 and the First Schedule of the Repealing and Amending Act, 1927 (10 of 1927).

5. These words were substituted for the words "or Naval", *ibid.*

6. These words were substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 141.—Notice of common object to each member essential, A.I.R. 1924 M. 376. Essence of offence, 46 M. 257. Promulgation of an order under S. 80 (2) of Police Act requiring a license for holding meetings etc. is "execution of law", 54 M. 1025. Assembly to "maintain possession" not unlawful, 1927 M.W.N. 828; 1931 M.W.N. 646 Cr. 126; 1934 M.W.N. 48 Cr. 11. Maintenance of fishing rights not unlawful, 1935 M.W.N. 178; Cr. 84 also 1925 M.W.N. 666. "Maintaining" as distinguished from "obtaining forceable possession", 1942 M.W.N. 42 Cr. 10. To break open temple and remove idols for celebrating festival is unlawful, 1940 M.W.N. 878 Cr. 118. Common object must not be vague and discrepant, 1936 M.W.N. 1131 Cr. 199. "Possession" includes actual as well as constructive possession, 1913 M.W.N. 273 Cr. 45. Persons assembled at midnight with housebreaking implements guilty, 1938 M.W.N. 598 Cr. 118. Alleged common object to commit theft—thief not made out no conviction under S. 141; 1936 M.W.N. 896 Cr. 172. Finding of intention of each necessary before conviction, 1935 M.W.N. 1194 Cr. 210. Obstruction of drain water under colour of right not unlawful, 1929 M.W.N. 711 Cr. 159.

143. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Punishment.

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining unlawful assembly armed with deadly weapon.

145. Whoever joins or continues in an unlawful assembly knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Rioting.

147. Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for rioting.

148. Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Rioting, armed with deadly weapon.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

S. 144.—If some members are armed with deadly weapons all are liable under this section 1930 M.W.N. 377 Cr. 97.

S. 146.—Ingredients. 1932 M.W.N. 431 Cr. 63. Setting fire to hayrick or cattle stand is "Violence" 1933 M.W.N. 1188 Cr. 182. "Force" defined in S. 349. Violence to inanimate objects included. A.I.R. 1923 M. 603.

S. 147.—Out of 7 charged, 4 acquitted and no evidence that more than 5 took part, the remaining 3 must also be acquitted. 1938 M.W.N. Cr. 41. See also A.I.R. 1943 M. 94. Where three alone out of fifty are identified the three can be convicted 1937 M.W.N. 985 Cr. 201. Case of each accused to be considered separately 1918 M.W.N. 129; 1934 M.W.N. 1092; Cr. 204 1935 M.W.N. 655; Cr. 119. Sentence on all the accused need not be the same. 1937 M.W.N. 891 Cr. 71. No purpose in charging a person under 147 and 148. 1935 M.W.N. 353 Cr. 57.

S. 148.—Existence of common object even before offence not necessary 35 M. 243. Where person charged for rioting are under S. 302 read with 149 he should be sentenced for murder not for rioting. 1935 M.W.N. 833; Cr. 57. Land owner's party armed to resist trespasser not unlawful. 1935 M.W.N. 1166; Cr. 206. Dangerous weapon in hand is essential. 1912 M.W.N. 294 Cr. 62. Where two parties were engaged and doubt exists as to real aggressors both parties liable. 1929 M.W.N. 583 Cr. 121. Only such of the members armed with deadly weapons can be convicted under the section A.I.R. 1926 M. 741; 1929 M.W.N. 888 Cr. 192.

S. 149.—Offences under this section are confined to those under this Code 52 M. 882, words "in prosecution of the common object" are equivalent to "in order to attain the common object" 1912 M.W.N. 298 Cr. 66. Section intended to make rioter constructively liable for offence other than that of rioting 1941 M.W.N. 91 Cr. 9 also. 1933 M.W.N. 109 Cr. 21. If common object set out in charge is hurt and grievous hurt is caused, all members are liable under S. 326. 1936 M.W.N. 939; Cr. 177; 1940 M.W.N. 242; Cr. 42.

150. Whoever hires or engages, or employs or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement of employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Hiring, or conniving at hiring, of persons to join unlawful assembly.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

153. Whoever maliciously, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

153A. Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's subjects, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects.]

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or

Wantonly giving provocation with intent to cause riot—if rioting be committed; if not committed.

S. 153.—Simultaneous processions of two sects do not necessarily involve an offence under the section 26 M. 554 (F.B.)

1, This section was added by S. 5 of the Indian Penal Code Amendment Act, 1898 (4 of 1898).

has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

Liability of person for whose benefit riot is committed.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or, assembly from taking place and for suppressing and dispersing the same.

Harbouring persons hired for an unlawful assembly.

157. Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons, knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months or with fine, or with both.

Being hired to take part in an unlawful assembly or riot;

158. Whoever is engaged or hired or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

and whoever, being so engaged or hired as aforesaid, goes armed or or to go armed. engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

160. Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, ¹[with the Central or any Provincial Government or Legislature], or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanation.—"Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government, which he serves, to accept.

"A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations

(a) A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(b) A, holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive

1. These words were substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 159.—Essentials of offence, 1933, M.W.N. 718 Cr. 106; 1938 M.W.N. 721; Cr. 108 (2). An open field with no compound wall is a public place. 1937 M.W.N. 28; Cr. 7. Private field not a public place 1937 M.W.N. 977 Cr. 193; fighting connotes two or more persons aggressive 1938 M.W.N. 975, Cr. 179.

S. 161.—Village Munsiff demanding money for registration of Vakalat not bribery 36, I.C. 899. Production of gratification (?) necessary, 51 M. 86. Offer of gratification to officer *functus officio* no offence, 1929 M.W.N., Cr. 143. Karnam for getting darshast commits no offence. 1924 M.W.N. 894. Sentence must be deterrent. 1936 M.W.N. 838 Cr. 162; Public servant guilty even independent of his official functions. 1943 M.W.N. 315 Cr. 49, (F.C.) Doctor after discharging patient is not *functus officio* for purposes of this section A.I.R. 1980. M. 671.

or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.

(c) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

162. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person 1[with the Central or any Provincial Government, or Legislature], or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

163 Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person 1[with the Central or any Provincial Government or Legislature] or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal who lays before the Government statements tending to show that the condemnation was unjust,—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate.

Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.

from any person whom he knows to have been, or to be or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public

servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate.

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration,

(b) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration,

(c) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant
disobeying law, with
intent to cause in-
jury to any person.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant
framing an incor-
rect document with
intent to cause in-
jury.

168. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant
unlawfully engag-
ing in trade.

169. Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

Public servant
unlawfully buying
or bidding for pro-
perty.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description, for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

1[CHAPTER IX-A]

OF OFFENCES RELATING TO ELECTIONS.

171A. For the purposes of this Chapter—

(a) “candidate” means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat; provided that he is subsequently nominated as a candidate at such election;

(b) “electoral right” means the right of a person to stand or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

171B. (1) *Whoever—*

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery :

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to given a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

1 Chapter IX-A was inserted by S. 2 of the Indian Elections Offences and Inquiries Act, 1920 (39 of 1920).

Ch. IX-A.—Acts amounting to offences under S. 52, Madras Dt. Municipalities Act are not offences under this Chapter A.I.R., 1929 M. 910.

Undue influence
at elections.

171C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interfere within the meaning of this section.

171D. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

Personation at
elections.

171E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Punishment for
bribery.

Provided that bribery by treating shall be punished with fine only.

Explanation.—‘Treating’ means that form of bribery where the gratification consists in food, drink, entertainment or provision.

171F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for
undue influence or
personation at an
election.

171G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

False statement
in connection with
an election.

171H. Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Illegal payments
in connection with
an election

S. 171C.—Telling people not to vote on false representations is not an offence. 1921 M.W.N. 757. Candidate's remark that (Gosha voters need not vote no threat under (2) (a) A.I.R. 1984 Mad. 27.

171D.—Corrupt intention of voter essential ingredient of offence 1930 M.W.N. 174 Cr. 31. Stepney case 10, M. & H. 34.

171G.—Statement must be of particular facts not merely one of interpretation of misconduct 55 M. 791. Publishing a statement at the time of receipt of nomination papers that rival candidate is a leper not an offence, 1939 M.W.N. 610 Cr. 94. Section does not apply to defamatory statement of a person not a candidate. Statement that rival candidate does not even know where the post office is and would merely hold his head or hold up his hands not a statement under 171G. 1935. M.W.N. 1164 Cr. 204.

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171-I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.]

Failure to keep election accounts.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172. Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both,

Absconding to avoid service of summons or other proceeding.

or, if the summons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Preventing service of summons or other proceeding, or preventing publication thereof.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

S. 172.—' Abscond ' includes concealing oneself or remaining concealed 4. M. 398.

S. 173.—Refusal of summons is not preventing the serving. 5 M. 199 also if refusal is accompanied by throwing down 5 M. 200.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

Non-attendance in obedience to an order from public servant.

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration.

(a) A being legally bound to appear before the Supreme Court at Calcutta in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A being legally bound to appear before a Zilla Judge, as a witness, in obedience to a summons issued by that Zilla Judge, intentionally omits to appear. A has committed the offence defined in this section.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

Omission to produce document to public servant by person legally bound to produce it.

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zilla Court, intentionally omits to produce the same. A has committed the offence defined in this section.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

Omission to give notice or information to public servant by person legally bound to give it.

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both ;

S. 174.—Failure of Accused asked to appear orally, is an offence under the Section 5 M.H.C. App. 56.

S. 176.—See S. 45 Cr. P. Code.

1[or, if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898, with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both,

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death had occurred by accident in consequence of the fall of a tree. A is guilty of the offence defined in this section.

(c) A, a village watchman, knowing that a considerable body of strangers had passed through his village in order to commit a robbery in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under clause 3, section VII of Regulation II, 1861 of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit a theft in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

[Explanation].— In section 176 and in this section the word “offence” includes any act committed in any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 352, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460, and the word “offender” includes any person who is alleged to have been guilty of any such act.]

178 Whoever refuses to bind himself by an oath¹ [or affirmation]² to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

1. These words were added by S. 2 of the Criminal Law Amendment Act, 1939 (22 of 1939).

S. 177.— Legally bound includes in pursuance of a departmental order 4 M. 141. False returns by vaccinator come within the scope of this section 6 M.H.C.A. 48.

2. Ben. Reg. 3 of 1821 was repealed by Act 17 of 1862.

3. This Explanation was added by S. 5 of the Indian Criminal Law Amendment Act, 1894 (3 of 1894).

4. These words were inserted by S. 15 of the Indian Oaths Act, 1873 (10 of 1873).

S. 179.— Accused refusing to plead does not commit the offence; 47, M. 896=1924 M.W.N. 141.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

181 Whoever, being legally bound by an oath ¹[or affirmation] to state the truth on any subject to any public servant or other person authorised by law to administer such oath ¹[or affirmation], makes, to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation

²[182] Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A informs a Magistrate that Z a public officer suborned to such Magistrate has been guilty of neglect of duty or misconduct knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place knowing such information to be false and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institut searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section].

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Resistance to the taking of property by the lawful authority of a public servant

¹ These words were inserted by S. 15 of the Indian Oaths Act 1873 (10 of 1873)

² This section was substituted for the original S. 182 by S. 1 of the Indian Criminal Law Amendment Act, 1895 (3 of 1895).

S. 182.—Conditions necessary 26 M 610 Distinction between this section and S. 211 1917 M.W.N. 875. Offence complete when information reaches public servant, 1982 M.W.N. 451, Cr. 67.

S. 183.—Construction—S. 99 and allied sections to be considered 21 Mad. 78. Mere objection to taking away is not resistance 1943 M.W.N. 711, Cr. 176.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Obstructing sale of property offered for sale by authority of public servant.

185 Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he bids himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Illegal purchase or bid for property offered for sale by authority of public servant.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Obstructing public servant in discharge of public functions.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both ;

Omission to assist public servant when bound by law to give assistance.

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

Disobedience to order duly promulgated by public servant.

S. 186.—If warrant while executing which the process server was resisted was an illegal warrant, no offence 1934 M.W.N. Cr. 230; A.I.R. 1925 M. 630 Voluntarily obstructs means doing of an overt act of obstruction 15 M. 221. Mere discussion is not obstruction 15 M. 93. Threatening police officer engaged in recovering stolen property is an offence. 1924 M.W.N. 438. Good faith of public servant would render accused's act of obstruction an offence even if act is illegal 1936 M.W.N. 211 Cr. 35. A conviction under S. 186 and under S. 353 illegal, 1938 M.W.N. 418; Cr. 66. Shutting the door to prevent sales officer of a Co-operative Society from seizing property in execution of decree is an offence 1942 M.W.N. 375; Cr. 79.

S. 187.—"Assistance" is *quodammodo* generic with the forms of assistance specified in the section. e.g. Refusal to attest search list is not an offence. 26 M. 419 (F.B.) Refusal to assist Salt Inspector in his search is an offence. 1920 M.W. N. 110.

S. 188.—"Order" must be a valid 'order'. 19 M. 461. 1932 M.W.N. 223; Cr. 31. Where Counter petitioners raised crop and harvested before possession was restored to opposite party no offence under 2nd clause 1941 M.W.N. 1030; Cr. 154. Where accused exhorted neighbours to close their shops as he has done when S. 144 order was in effect, held no offence under this section. 1932 M.W.N. 1073; Cr. 213. Knowledge of order, disobedience of which is charged is necessary ingredient 1937 M.W.N. 172. Mere disobedience without any effect is not an offence 1928 M.W.N. 70, 1925 M.W.N. 396.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustration.

(a) A in support of a just claim which B has against Z for on the 1st and supposes falsely to say on a trial that he heard Z admit the justice of his claim. A gives false evidence.

(b) A being sworn to state the truth states that he has seen the signature of the handwriting of Z, when he does not believe that to be the handwriting of Z. Here A states that which he knows to be false and therefore gives false evidence.

(c) A knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z. A is guilty of giving false evidence. If A's statement is merely as to his belief and is true as to his belief and therefore although the signature may not be the handwriting of Z A has not given false evidence.

(d) A being sworn to state the truth states that he knows that Z was at a particular place on a particular day but that he does not know anything in the subject. A gives false evidence whether Z was at that place on that day or not.

(e) A an interpreter or translator of a statement or of a document orally or in writing states a true interpretation or translation of a statement or of a document which he does not believe to be a true interpretation or translation. A has given false evidence.

192 Whoever causes any circumstance to exist or makes any false

Fabricating false evidence entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustration.

(a) A puts jewels into a box belong to Z with the intention that they may be found in that box and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop book for the purpose of using it as corroborative evidence in a court of justice. A has fabricated false evidence.

(c) A with the intention of causing Z to be convicted of a criminal conspiracy writes a letter in imitation of Z's handwriting purporting to be addressed to an accomplice in such criminal conspiracy and put the letter in a place which he knows that the officer of the Police is likely to search. A has fabricated false evidence.

193 Whoever intentionally gives false evidence, in any stage of a

Punishment for false evidence judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

S. 193.—Judge's notes of evidence are not admissible to prove perjury, 6 M. L. T. 158. Strict proof of administration in case of oath is necessary, 20 Cr. L. J. 379. Statements under S. 164 Cr. P. C. are evidence contemplated under the section, 133 M. W. N. 100 Cr. 12. But not confessional statements under 162, 1933 M. W. N. 251 Cr. 43. Using in court a false receipt as genuine is an offence, 1932 M. W. N. 154 Cr. 70. Att. stor. of receipt forged, intended to prove discharge of debt is guilty under the section, 1941 M. W. N. 1036 Cr. 160. Distinction between this section and Section 167, 1944 M. W. N. 634 Cr. 155. It is not necessary that every perjurer should be charged. Wife perjury in favour of husband 1933 Mad. Cr. Cases 185, A. I. R. 1933 M. 280. Daughter in favour of father. 1944 M. W. N. Cr. 49. If deposition of witness is not read over and interpreted to him he cannot be prosecuted under the section on such deposition 42 M. 561 also if read over and explained in the absence of judge and Vakils 28 M. 803 but not so merely because another witness was being examined 94 M. 141.

Explanation 1.—A trial before a Court-martial¹ * * is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital² [by the law of British India or England], shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine ;

Giving or fabricating false evidence with intent to procure conviction of capital offence ;

if innocent person be thereby convicted and executed.

and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

195. Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which² [by the law of British India or England] is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Giving or fabricating false evidence with intent to procure conviction of offence punishable with transportation or imprisonment.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

196. Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Using evidence known to be false.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Issuing or signing false certificate.

1. The words "or before a Military Court of Request" were repealed by Act 2 of 1924.

2. These words were substituted for the words "by this Code" by S. 149 of the Indian Railways Act, 1890 (9 of 1890).

S. 196.—An attempt to get a false medical certificate is not an offence. 19 Cr. L.J. 388. Knowledge essential. 48 M. 395.

198. Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true a certificate known to be false.

199. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

False statement made in declaration which is by law receivable as evidence.

200. Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true such declaration knowing it to be false.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

Causing disappearance of evidence of offence or giving false information to screen offender—

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

If a capital offence;

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

If punishable with transportation ;

and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

if punishable with less than ten years' imprisonment.

S. 201.—Where accused produced the severed head of the deceased, not by itself is not sufficient to warrant his conviction under this section 1936 M.W.N. 1889 Cr. 246. Where accused caught hold of deceased's tuft and dragged the body of deceased no offence 1984 M.W.N. 1281 Cr. 233. The conviction for main offence and for S. 201 to 203. All that is required for a conviction under later sections is commission of offence and false information given by the accused. S. 201 has the added intention. For calculating punishment under the last clause, assumption that accused did not commit the main offence. 54 M. 68 = 1980 M.W.N. Cr. 113. Mere possession of property of deceased immediately after the murder is sufficient to prove his guilt under this section. He may be convicted even though he was not charged with it. 1937 M.W.N. 544 Cr. 104. The information need not be given to the police or the magistrate and it is immaterial whether it is volunteered or in answer to questions, 1940 M.W.N. 808 Cr. 96. Ingredients of the offence—*inter alia* there must be proof of commission of offence, 3 M.E.C. 251.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

202. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Intentional omission to give information of offence by person bound to inform,

203. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Giving false information respecting an offence committed.

1[*Explanation.*—In sections 201 and 202 and in this section the word “offence” includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.]

204. Whoever secretes or destroys and document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Destruction of document to prevent its production as evidence.

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

False personation for purpose of act or proceeding in suit or prosecution.

206. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or

Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.

S. 202.—Omission to report identity of a criminal, is an offence.

1. This explanation was added by S. 7 of the Indian Criminal Law Amendment Act, 1894* (3 of 1894.)

S. 206.—Dishonest removal of crops offence 1938 M.W.N. 772 Cr. 110; of cattle from custody of person in charge 1936 M.W.N. 212 Cr. 86. Where property is removed openly no offence 1936 M.W.N. 1150 Cr. 210. Guardian refusing to desist from harvesting when an amin was sent to harvest crop under attachment is to prevent execution but his act was not fraudulent under this section 1937 M.W.N. 462 Cr. 94. More harvesting of crop by Judgt. debtor without fraudulent intention is no offence 1938 M.W.N. 1009; Cr. 182 where accused Judgment debtor sold property contrary to undertaking in court he is guilty under this section 1992 M.W.N. 1248 Cr. 193. Difference between this section and S. 421 1942 M.W.N. 492 Cr. 124.

other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

207. Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or right-ful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently suffering decree for sum not due.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgement to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

209 Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Dishonestly making false claim in Court.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently obtaining decree for sum not due.

211. Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that

False charge of
offence made with
intent to injure.

person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person,

shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

212. Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,

Harbouring offender.—

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine ;

If a capital offence ;

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

If punishable with transportation for life, or with imprisonment.

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

1[“Offence” in this section includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460 ; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.]

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

S. 211.—False charge to village magistrate is an offence 27 M. 129; mere despatch of telegram with false information is not an offence 1914, M.W.N. 382, any statement occurred in case of police investigation cannot be made the basis of prosecution under this section 1935 M.W.N. 1197 ; Cr. 218. Informers cannot be convicted under this section 1931 M.W.N. 1138 ; Cr. 284. A gangman giving false report to the station master in discharge of his duties cannot be convicted for this offence. 1944 M.W.N. 271 ; Cr. 67 a person applying for an order under S. 144 Cr.P.C. institutes a criminal proceeding under this section. 1933 M.W.N. 1263 Cr. 195 Mere communication of suspicion to police is no offence 1912 M.W.N. 1125 ; 1915 M.W.N. 272. False charge of dacoity made to a police station house officer is a criminal proceeding under the section 20 M. 79. Informants' statement under S. 162 Cr.P.C. cannot be made basis of a prosecution under the section 31 M. 506. True test is whether the law is set in motion 26 M. 644.

1. This paragraph was inserted by S. 7 of the Indian Criminal Law Amendment Act, 1894 (8 of 1894).

213. Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

214. Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

shall, if the offence is punishable with death be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

1[*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.]

[*Illustrations.*] *Repealed by Act X of 1882.*

215. Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the

S. 214.—Proof of actual commission of offence necessary, 14 M. 400. The offer of a bribe by the offender himself is within section 1, Weir 194.

1. This Exception was substituted for the original Exception by S. 6 of the Indian Penal Code Amendment Act, 1882 (8 of 1882).

S. 215.—Does not apply to the thief but only to a person in league with him who receives gratification, 1. Weir 196; 26 M.L.J. 598.

offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring offender who has escaped from custody or whose apprehension has been ordered—

216. Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody,

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished
if a capital offence : with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

if punishable with transportation for life, or with imprisonment.

if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine ;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence or with fine, or with both.

1[“ Offence ” in this section includes also any act or omission of which a person is alleged to have been guilty out of British India which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India, and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.]

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

2[216A.] Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Penalty for harbouring robbers or dacoits

S. 216.—Harboured person need not be found guilty, acquittal may be taken into consideration for sentence, 52 M. 71. Elements necessary.—Proof of warrant or order for arrest and proof of ‘ knowing ’ as distinct from ‘ having reason to believe ’, I.L.R. 1945 M. 237 : (P.C.).

1. This paragraph was inserted by S. 23 of the Indian Criminal Law Amendment Act, 1886 (10 of 1886).

2. S. 216A was inserted by S. 8 of the Indian Criminal Law Amendment Act, 1894 (3 of 1894).

Explanation.—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without British India.

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.]

216B. [Definition of "harbour" in sections 212, 216 and 216A.]
Repealed by S. 3 of Act 8 of 1942.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.

218. Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Public servant in judicial proceeding corruptly making report, etc., contrary to law.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

S. 217.—A Police constable retaining piece of gold for himself in the course of a search without reporting is guilty, 16 Cr. L.J. 218.

S. 218.—Difference between Ss. 218 and 219. See 1938 M.W.N. 345; Cr. 53. Intentionally and knowingly making a totally incorrect entry in the diary by a Police Inspector is an offence, 1911. 2 M.W.N. 44.

S. 219.—Essentials of the offence 1938 M.W.N. 345; Cr. 53.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

Intentional omission to apprehend on the part of public servant bound to apprehend.

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death ; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years ; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

222. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence ¹[or lawfully committed to custody], intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

Intentional omission to apprehend on the part of public servant bound to apprehend.

with transportation for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death ; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards ; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years ¹[or if the person was lawfully committed to custody].

223. Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence ¹[or lawfully committed to custody], negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Escape from confinement or custody negligently suffered by public servant.

1. These words were inserted by S. 8 of the Indian Penal Code Amendment Act, 1870 (27 of 1870).

S. 223.—A Village Vetti is not one within the scope of the Section. 1 Weir 197.

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

1[225-A. Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

S. 225.—A person rescuing another in custody under S. 59 Cr. P.C. commits an offence under the section, 1 Weir 209 = 11 M. 441. Obstruction to arrest which is illegal as no proof that place is a common gaming house within S. 5. Madras Gaming Act—no offence, 1984 M.W.N. 616 Cr. 120.

1. Ss. 225-A and 225-B were substituted by S. 24 (1) of the Indian Criminal Law Amendment Act, 1886 (10 of 1886).

- (a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and
- (b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.]

1[225-B. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.]

Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

Unlawful return from transportation.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

Violation of condition of remission of punishment.

228. Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Intentional insult or interruption to public servant sitting in judicial proceeding.

229. Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a jurymen or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned,

Personation of a juror or assessor.

1. Ss. 225-A and 225-B were substituted by S. 24 (1) of the Indian Criminal Law Amendment Act, 1886 (10 of 1886).

S. 225-B.—Escape is punishable even if it be with the consent of the custodian, 1919 M.W.N. 695; even if custodian be negligent, 81 M. 279. Obstruction to arrest of boy of 7 years no offence, 1915 M.W.N. 543. Where warrant of arrest was signed by Dy. Nazir not empowered, resistance to it not an offence, 1934 M.W.N. 399; Cr. 72; but if by head clerk, authorised by District Munsif offence, 1938 M.W.N. 316 Cr. 48. Judgt-debtor paying detention batta and refusing to follow process sever is liable under the section, 1938 M.W.N. 1222 Cr. 250. The prosecution must establish constable who arrested and had power to act under the specific authority he claimed to have, 47 M. 442.

S. 228.—Mere refusal to obey direction of Magistrate without offensive words or gesture is not an insult. 1935 M.W.N. 704 Cr. 186 Abusing vulgarly an adbhikari functioning as court is an offence 1934 M.W.N. 398 Cr. 70. Judicial proceeding continues until prisoner is discharged or removed to custody. 1 Weir. 214. The fact that a remark is audible is not necessarily interruption 24 M.L.J. 274.

empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

230. ¹[Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.]
 "Coin" defined.

²[Queen's coin is metal stamped and issued by the authority of the Queen, or by the authority of ³[the Central Government] or of the Government of any Presidency, or of any Government in the Queen's dominions, in order to be used as money; and metal which has been so stamped and issued shall continue to be the Queen's coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.]
 Queen's coin.

Illustrations.

- (a) Cowries are not coin.
- (b) Lumps of unstamped copper, though used as money, are not coin.
- (c) Medals are not coin, inasmuch as they are not intended to be used as money.
- (d) The coin denominated as the Company's rupee is the Queen's coin.
- ⁴(e) The "Farukhabad", rupee which was formerly used as money under the authority of the Government of India, is Queen's coin although it is no longer so used.]

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
 Counterfeiting coin.

Explanation.—A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
 Counterfeiting Queen's coin.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.
 Making or selling instrument for counterfeiting coin.

1. This paragraph was substituted for the original paragraph by the Indian Penal Code Amendment Act, 1872 (19 of 1872).

2. This paragraph was substituted for the original paragraph by S. 1. (2) of the Indian Penal Code Amendment Act, 1896 (6 of 1896).

3. These words were substituted for the words "the Government of India" by the Government of India (Adaptation of Indian Laws). Order, 1937.

4. This illustration was added by S. 1 (2) of the Indian Penal Code Amendment Act. 1896 (6 of 1896).

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument for counterfeiting Queen's coin, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

235. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

and if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetting in India the counterfeiting out of India of coin.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowingly or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

239. Whoever, having any counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

240. Whoever, having any counterfeit coin, which is a counterfeit of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

S. 235.—Moulds if found must be capable of producing counterfeit coins to make their possession an offence 1 Weir 290. Intention, knowledge or belief essential to make physical possession an offence 1938 M.W.N. 89; Cr. 17.

S. 240.—Prosecution must prove that at the time of possession of coins the accused knew them to be counterfeit 1937 M.W.N. 876 Cr. 180.

- 241.** Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Delivery of coin as genuine, which when first possessed, the deliverer did not know to be counterfeit.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D after receiving the rupees, discovers that they are counterfeit and passes them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

- 242.** Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

- 243.** Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of Queen's coin by person who knew it to be counterfeit when he became possessed thereof.

- 244.** Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

- 245.** Whoever, without lawful authority, takes out of any mint, lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Unlawfully taking coining instrument from mint.

- 246.** Whoever, fraudulently or dishonestly, performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

*Explanation:—*A person who scoops out part of the coin and puts anything else into the cavity alters the composition of that coin.

S. 241.—Prosecution must prove knowledge at the time of delivery that the coins were counterfeit. 1937 M.W.N. 876 Cr. 180.

S. 243.—Mere residence by concubine cannot make her responsible for possession of counterfeit coins in the house. 1938 M.W.N. 222 (2) Cr. 30.

Fraudulently or dishonestly diminishing weight or altering composition of Queen's coin.

247. Whoever, fraudulently or dishonestly, performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of coin with intent that it shall pass as coin of different description.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of Queen's coin with intent that it shall pass as coin of different description.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Delivery of coin possessed with knowledge that it is altered.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Queen's coin possessed with knowledge that it is altered.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of coin by person who knew it to be altered when he became possessed thereof.

252. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Queen's coin by person who knew it to be altered when he became possessed thereof.

253. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

254. Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce

Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.

any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248, or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government

Counterfeiting Government stamp.

for the purpose of revenue, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear, like a genuine stamp of a different denomination.

256. Whoever has in his possession any instrument or material for the

Having possession of instrument or material for counterfeiting Government stamp.

purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven

years, and shall also be liable to fine.

257. Whoever makes or performs any part of the process of making, or

Making or selling of instrument for counterfeiting Government stamp.

buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of

revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

258. Whoever sells, or offers for sale, any stamp which he knows or has

Sale of counterfeit Government stamp.

reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the

Having possession of counterfeit Government stamp.

purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of

either description for a term which may extend to seven years, and shall also be liable to fine.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of

Using as genuine a Government stamp known to be counterfeit.

revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

261. Whoever, fraudulently or with intent to cause loss to the Govern-

Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.

ment, removes or effaces from any substance, bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document, a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of

either description for a term which may extend to three years, or with fine, or with both.

262 Whoever, fraudulently or with intent to cause loss to the Govern-

Using Government stamp known to have been before used.

ment, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or

with fine, or with both.

263. Whoever, fraudulently or with intent to cause loss to Government,

Erasure of mark denoting that stamp has been used.

erases or removes from a stamp issued by Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or

disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Prohibition of fictitious stamps.

1[263A. (1) Whoever—

- (a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or
- (b) has in his possession, without lawful excuse, any fictitious stamp, or
- (c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or material in the possession of any person for making any fictitious stamp may be seized and shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word "Government" when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country].

1. S. 263A was added by S. 2 of the Indian Criminal Law Amendment Act, 1895 (8 of 1895).

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent use of false instrument for weighing.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent use of false weight or measure.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

Being in possession of false weight or measure.

267. Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making or selling false weight or measure.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

268. A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

Public Nuisance.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Negligent act likely to spread infection of disease dangerous to life.

S. 266.—Ingredients of the offence. 1948 M.W.N. 341 Cr. 61 Presumption of knowledge of falsity and use from fact that the weight in question was regularly used 1944 2 M.L.J. 249.

S. 263.—Gambling on a thoro' fare is a public nuisance 16 Cr. L.J. 254 allowing prickly pear to spread on to a road is public nuisance. 51 M. 79.

S. 269.—Prosecution must prove not only there has been disobedience to the order of Health authorities but also the accused has unlawfully or negligently done the act. Difference between "unlawfully" and "illegally" 48 M. 804. Travelling in a train by a person suffering from cholera is an offence. 7 M. 276.

Malignant act likely to spread infection of disease dangerous to life.

270. Whoever maliciously does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

271. Whoever knowingly disobeys any rule made and promulgated [by the Central or any Provincial Government or the Crown Representative,] for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

1. These words were substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 272.—Sale of milk mixed with water not an offence under the section 1 Weir 228. Sale of noxious toddy is an offence 1 Weir 228.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

279. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

281. Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

S 277.—Points to be considered for offence. 1 Weir 229. Public spring does not include running water in the bed of a river 4 M. 229 1 Weir 230. Mere angling no offence 1 Weir 281 but cultivating paddy in the bed of a tank 1 Weir 229.

S. 283.—Obstruction on a road necessarily obstructs pedestrians as well as motorists 88 M. 306. Where a cart track lay in patta land of the accused, used by public for 15 years and accused closed track by a wall no offence. 1989 M.W.N. 1259 Cr. 308.

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, which may extend to one thousand rupees, or with both.

Negligent conduct
with respect to fire
or combustible
matter.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, which may extend to one thousand rupees, or with both.

Negligent conduct
with respect to
explosive substance.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct
with respect to
machinery.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct
with respect to
pulling down or
repairing buildings.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct
with respect to
animal.

Punishment for public nuisance in cases not otherwise provided for.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

Continuance of nuisance after injunction to discontinue.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Sale, etc., of obscene books, etc.

1[**292.** Whoever—

- (a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or
- (b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or
- (c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or
- (d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or
- (e) offers or attempts to do any act which is an offence under this section,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception.—This section does not extend to any book, pamphlet, writing, drawing or painting kept or used *bona fide* for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.]

1[**293.** Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.]

Sale, etc., of obscene objects to young person.

S. 290.—Joint owner is responsible for nuisance caused by his property 52 M. 79 essential ingredients of the offence, 1986 M.W.N. 1131; Cr. 211. The public mean general public and not an individual of general susceptibilities 1936 M.W.N. 1151 Cr. 211. Letting out clean water need not necessarily be a public nuisance. 1932 M.W.N. 111 Cr. 16.

S. 292.—Essence of the offence obscenity, 5 L.W. 237.

1. This section was substituted for the original S. 293 by S. 2 of the Obscene Publications Act, 1925 (8 of 1925).

Obscene acts and songs.

1[294. Whoever, to the annoyance of others,

(a) does any obscene act in any public place or

(b) sings, recites or utters any obscene songs, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.]

2[294-A. Whoever keeps any office or place for the purpose of drawing any lottery 3[not being a State lottery or a lottery authorised by the Provincial Government] shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Keeping lottery office.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery shall be punished with fine which may extend to one thousand rupees.]

CHAPTER XV

OF OFFENCES RELATING TO RELIGION

295. Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Injuring or defiling place of worship, with intent to.

Insult the religion of any class.

4[295A. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of His Majesty's subjects, by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

1. This section was substituted for the original S. 294 by S. 3 of the Indian Criminal Law Amendment Act, 1895 (3 of 1895).

2. This section was inserted by S. 10 of the Indian Penal Code Amendment Act, 1870 (37 of 1870).

3. These words were substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 294-A.—Principles underlying a lottery. 18 Cr. L.J. 768. What acts amounts to a lottery? 1 Weir 251; 1 Weir 254; 1934 M.W.N. 265 Cr. 49. Chit fund not a lottery, 49 M. 661 "goods" includes immoveable property, 53 M. 479. Meaning of "keeps office". 44 M.L.J. 595; 49 M.L.J. 701 meaning of "drawing" 1942 M.W.N. 174 Cr. 42.

S. 295.—Scope of section. 10 M. 126. Meaning of "defile" 1 Weir 258, 256 "defile" extends to "ceremonial pollution" 41 M. 980.

4. This section was inserted by S. 2 of the Criminal Law Amendment Act, 1927 (25 of 1927).

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded or that the religion of any person is likely to be insulted thereby,

commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

Of Offences affecting Life.

299 Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations.

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A intending to cause, or knowing it to be likely to cause Z's death induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush. A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B or cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

S. 296.—Knowledge of likelihood of disturbance sufficient 34 M. 92 must be substantial disturbance 1945 M.W.N. 569 Cr. 117.

S. 299.—Expn. 1. Fact that deceased had an abnormality such as fatty heart and that contributed to death offence murder 1935 M.W.N. 51 Cr. II. Expn. II. Stab on a vital part of body, the fact that the deceased might have been saved by expert, medical aid makes no difference. 1939 M.W.N. 1129 Cr. 169. I.L.B., 1944 M. 763.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.

***S. 300.**—Hitting wife with ploughshare rendering her senseless, and believing her dead the husband hanged her to resemble suicide, and she died of asphyxiation not guilty of murder, 42 M. 547 (F.B.). But where there was actually intention to murder and first act does not kill but subsequent act caused death offence is murder, 57 M. 158; 1939 M.W.N. Cr. 125; 1948 M.W.N. 842 Cr. 70 (42 M. 547 and 57 M. 158 distinguished). Intending death of A, but causing death of B, is murder, 1912 M.W.N. 136. In the absence of intention and evidence that death was caused in ordinary course of nature no offence under 300 (3); 1945 M. 73. Test of intention and knowledge with reference to nature of weapon and force used, 1937 M. 684; 1938 M.W.N. 164 I.L.R. 1944 M. 763 I.L.R. 1944 M. 818. (Rice pounder cases). Where accused stabbed deceased with knife on left forearm cutting radial artery, offence not under S. 299 or 300; 1939 M.W.N. 12 74 Cr. 219. Grievous assault on old man breaking his thigh murder, 1931 M.W.N. 182 Cr. 20 Chopping off a man's leg with a sword murder, 1940 M.W.N. 479 Cr. 67. Hitting an old man on turbaned head which was brittle not murder, 1931 M.W.N. 1152 Cr. 240. Where deceased died of cerebral haemorrhage due to excitement and not due to blow on the chest not guilty, 1935 M.W.N. 812 Cr. 140. If there are two accused and no evidence which accused committed the offence both not guilty of murder, 56 M. 63, but if concert is proved both guilty of murder, 1937 M.W.N. 1233 Cr. 249. In child murder, fact that child was born alive must be proved, 1939 M.W.N. 1130 Cr. 171. It must be proved in a case of child murder the *corpus delicti* was of the child born to the accused, 1940 M.W.N. 1105 Cr. 149. Divine influence or inspiration cannot be pleaded as a defence for murder, 1937 M.W.N. 93 Cr. 21. If death was due to septicæmia and pyæmia, arising out of injuries which cumulatively should prove fatal offence is murder, I.L.R. 1914 M. 437. Administering aconite mixture in husband's meal to deprive him of his will power will not *per se* be an offence under this section but will be under S. 330; 1948 M.W.N. 128 Cr. 16. In a case of datura poisoning victim recovered but dying of pneumonia offence not under S. 300 but under S. 328; 1941 M.W.N. 1088 Cr. 162. On the wife's confession of adultery husband killing paramour offence one of murder, 1938 M.W.N. 543 Cr. 91.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos :—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

S. 300.—Exception 1.—1940 M.W.N. 811 Cr. 99 must be proved by the accused by S. 105, I.E.A., A.J.R. 1921 M. 808. Seeing wife ravished by deceased falls under this exception, 1981 M.W.N. 1187 Cr. 299. Accused seeking out deceased who was intimate with his wife and killing him is murder, 1937 M.W.N. 94 Cr. 22.

Exception 2.—Accused must show he had reasonable apprehension of being killed or grievously hurt, 1981 M.W.N. 606 Cr. 118. Accused must prove. See 105, I.E.A. 1940 M.W.N. Cr. 172.

Illustration.

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A, A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

301. If a person, by doing anything which he intends or knows to be

Culpable homicide by causing death of person other than person whose death was intended.

likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Punishment for murder.

302. Whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine.

Punishment for murder by life-convict.

303. Whoever being under sentence of transportation for life, commits murder, shall be punished with death.

S. 300.—**Exception 4.**—Using a knife in case of no risk of serious hurt is undue advantage etc. under the Section 16 Cr. L.J. 747. Deceased being given 7 injuries with a nail in return for one blow with a stick is taking undue advantage 1938 M.W.N. 1430 Cr. 234. Accused taking out a knife and stabbing deceased unarmed is taking undue advantage 1937 M.W.N. 1236 Cr. 252. Even single blow with a rice pounder will not be under the exception I.L.R. 1944 M. 818.

Exception 5 deceased woman above 18 feeling depressed and desperate requesting accused to kill her falls within the exception. 54 M. 504: also 1939 M.W.N. 1132 Cr. 172. Intention to kill can be on legitimate inferences from proved circumstances and conduct of accused. 1944 A.L.J. 466 (P.C.), also see 1939 M.W.N. 1132 Cr. 172.

S. 301.—Intention to kill A and B is killed offence is murder 1934 M.W.N. Cr. 27.

S. 302.—**Sentence: Extenuating circumstances.** Suspicion of unchastity on the part of wife not extenuating circumstance 1929 M.W.N. 269 Cr. 41. Slight provocation an extenuating circumstance 16 Cr. L.J. 611. Conviction on circumstantial evidence not an extenuating circumstance, 1929 M.W.N. Cr. 42 1940 M.W.N. 229 Cr. 169, 44 M. 443; Sudden quarrel an extenuating circumstance 1929 M.W.N. 789 Cr. 166 Young age of accused not *per se* an extenuating circumstance 58 M. 861. 1937 M.W.N. 1133 1935 M.W.N. Cr. 137; 1942 M.W.N. Cr. 128. Old age not extenuating circumstance *per se* 1937 M.W.N. 728 Cr. 152. Existence of young baby is not a ground for lesser sentence 1940 M.W.N. 931 Cr. 125. Delay in apprehension of accused not an extenuating circumstance 1940 M.W.N. 1235 Cr. 171. Constructive liability not extenuating circumstance 1944 M.W.N. Cr. 54 (F.C.)

304. Whoever commits culpable homicide not amounting to murder, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death ;

Punishment for culpable homicide not amounting to murder.
or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

1 [304A. Whoever causes death of any person by doing any rash or negligent act not amounting culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Abetment of suicide of child or insane person.
306. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

307. Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ; and, if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

Attempt to murder.
2[When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.]

Illustration.

(a) A shoots at Z with intention to kill him, under such circumstances that, if death caused, A would be guilty of murder. A is liable to punishment under this section.

(b) A with the intention of causing the death of a child of tender years exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

S. 304.—(2) Kicking on the abdomen twice with no mark external or internal and the death was due to shock no offence under the section 1941 M.W.N. 222 Cr. 16. Beating with stones by three persons and death by concussion of brain not guilty under the Section. 1941 M.W.N. 528 Cr. 53.

S. 304-A.—What is 'rash' & 'negligent' 7 M. H.C.R. 119. Motor collision of 2 buses causing death offence is one under the Section. 1933 M.W.N. 556 Cr. 108 Asking driver to overtake a car not abetment. 1939 M.W.N. 416 Cr. 60. Death (due to recognised treatment by a medical practitioner) does not itself prove criminal negligence A.L.R. 1934 P.C. 72. Where accused kept weed killer and servants died taking same mistaking for arrack accused not guilty 1941 M.W.N. 684 Cr. 88. Driving car rashly while drunk and causing death of pedestrians—offence under the Section 1929 M.W.N. 395 Cr. 69.

1. S. 304A was inserted by the Indian Penal Code Amendment Act, 1870 (27 of 1870), S. 12.

2. This clause was added by S. 11, *ibid*.

S. 306.—Inducing a women to perform 'Sati'. 8 Patna J. 84 Cr. L.J. 1969.

S. 307.—Intention or knowledge essential 1987 M.W.N. 556 Cr. 116.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of [the first paragraph of] this section.

(d) A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

308. Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z. under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

309. Whoever attempts to commit suicide and does any act towards commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, [or with fine, or with both.]

310. Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

311. Whoever is a thug, shall be punished with transportation for life, and shall also be liable to fine.

312. Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both, and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry, is within the meaning of this section.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

1. These words were inserted by the Amending Act, 1891 (12 of 1891). Sch. II.

S. 308 III.—What amounts to grave and sudden provocation Rightful rebuke is not grave and sudden provocation 1937 M.W.N. 687 Cr. 141.

S. 309.—Accused, prevented on the way to a well before act, commits no offence. 8 M. 5.

2. These words were substituted by S. 7 of the Indian Penal Code Amendment Act, 1882 (8 of 1882).

S. 312.—*R. v. Bourne*. [1939] 1 K.B. 687.

- 314.** Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

Death caused by act done with intent to cause miscarriage.

If act done without woman's consent.

and if the act is done without the consent of the woman shall be punished either with transportation for life, or with the punishment above mentioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

- 315.** Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Act done with intent to prevent child being born alive or to cause it to die after birth.

- 316.** Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing death of quick unborn child by act amounting to culpable homicide.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which if it caused the death of woman, would amount to culpable homicide. The woman is injured but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

- 317.** Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Exposure and abandonment of child under twelve years, by parent or person having care of it.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide as the case may be, if the child die in consequence of the exposure.

- 318.** Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Concealment of birth by secret disposal of dead body.

Of Hurt

- 319.** Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Hurt.

S. 318.—Child must be full born not merely a foetus a few months old, 1 Weir 338. 1 Weir 384. Leaving the deadbody in a public place near houses is not secret disposition, 1911 M.W.N. 879; 87 M 565.

320. The following kinds of hurt only are designated as "grievous":—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

321. Whoever does any act with the intention of thereby causing hurt to any person or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

S. 323.—Prosecution under this section does not abate on death of the complainant.
44 M. 417.

325. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for voluntarily causing grievous hurt.

326. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire, or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt by dangerous weapons or means.

327. Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort property, or to constrain to an illegal act.

328. Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing hurt by means of poison, etc., with intent to commit an offence.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do any thing that is illegal or which may facilitate the commission of an offence, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

S. 325.—The mere fact that a blow on the arm caused a fracture without the accused's intention or knowledge to cause grievous hurt is not punishable under this section. 1936 M.W.N. 529, Cr. 90. The wording of the section makes it clear that sentence must be one of imprisonment with or without fine. 1942 M.W.N. 877, Cr. 81. The nostrils of a woman were cut to steal jewels on the nose and the woman dies. The offence in one under this section. 1944 M.W.N. 253 Cr. 61. 1945 M. 73. On the severe beating even if death prevails due to some internal trouble offence is one under this section. 1930 M.W.N. 74 Cr. 2.

S. 326.—On a charge under section 326 and 149 accused convicted only under 326 conviction not necessarily bad. I.L.B. 47 Madras 746 (F.B.). No conviction under this section unless weapon used was deadly and hurt intended or known to be grievous. 1989 M.W.N. 414, Cr. 58. Sentence of fine alone is insufficient. 1937 M.W.N. 576, Cr. 185. S. 502 (1) Cr. P.C. does not apply to an offence under this section. 1948 M.W.N. 585 Cr. 145.

S. 328.—Husband given aconite in his meal to deprive him of his will power dies. Offence one under this section and not 302. I.L.R. 1948 Madras 679.

- 330.** Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations.

- (a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.
- (b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.
- (c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.
- (d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

- 331.** Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

- 332.** Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty, as such public servant or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

- 333.** Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

S. 332.—Duty need not necessarily be one imposed by law 7 M.L.T. 386. A distrainger removing the front door of a house is not lawfully discharging his duty under this section. 1980 M.W.N. 174 Cr. 28. The officer is not said to discharge his official duty merely because he was in official dress what he was doing at that time is that which counts. 1936 M.W.N. 892 Cr. 168. A process server taken to arrest accused pushed and beaten. Such beating is an offence under this section. 1999 M.W.N. 518 Cr. 90. Charges of hurting an Amin in his capacity as a public servant as well under section 332 must be tried by the First Class Magistrate. 1984 M.W.N. 271, Cr. 55. A Talayari assisting Village Munsif in collection of kists, if assaulted, an offence under this section is committed. 1948 M.W.N. 804, Cr. 192.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

335. Whoever [voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—The last two sections are subject to the same provisos as Exception 1, section 300.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Of Wrongful Restraint and Wrongful Confinement.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass. A not believing in good faith that he has a right to stop the path, Z is thereby prevented from passing. A wrongfully restrains Z.

1. The word "voluntarily" was inserted by S. 8 of the Indian Penal Code Amendment Act, 1882 (8 of 1882).

S. 339.—Mere ploughing on a path is not obstruction 16 Cr. L.J. 701. Preventing a person on horseback proceeding further is wrongful restraint. 1977 Madras Criminal Cases 67. Obstructing a marriage procession in a motor car is an offence under this section. 1984 M.W.N. 690. Cr. 124. Physical presence of the obstructor not necessary. Mere placing of an obstacle is sufficient. 34 M. 547.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Wrongful confinement.

Illustrations.

(a) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z, if Z attempts to leave the building. A wrongfully confines Z.

341. Whoever, wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Punishment for wrongful restraint.

342. Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Punishment for wrongful confinement.

343. Whoever, wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wrongful confinement for three or more days.

344. Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for ten or more days.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.

Wrongful confinement of person for whose liberation writ has been issued.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement in secret.

S. 341.—Unreasonable delay to issue passport. 2 M.L.T. 159. Where a village official apprehends a person about to commit a breach of the peace not liable under this section. 44 M. 913. Stopping a person by force by catching hold of his bandy bull is an offence under this section 1998 M.W.N. 1010 Cr 183. But see 1915 M.W.N. 203. Emigration agent refusing to permit intending emigrants to leave emigration depot is wrongful restraint. 1911 (1) M.W.N. 369. Where a member of one community interdicts a member of another community from a lawful use of a public street he commits an offence. 50 M. 679 following 80 M. 185 (P.C.).

S. 342.—When confinement wrongful see 46 M. 605 (F.B.) Not summarily triable. Even offence under S. 341 against public servants not advisable to be tried summarily 1932 M.W.N. 478, Cr. 95.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement to extort property, or constrain to illegal act.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement to extort confession, or compel restoration of property.

Of Criminal Force and Assault.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Criminal force.

Illustrations.

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other action on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence or intending or knowing it to be likely, that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole, and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z, and he has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z. A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

351. Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending, or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not, mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

S. 352.—Persons may riot without actually committing an offence under this section A.I.R. 1928. M. 21; but if charged under S. 147, conviction can be had for an offence under this section 1922. M.W.N. 182,

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

353. Whoever assaults or uses criminal force to any person being a

Assault or criminal force to deter public servant from discharge of his duty.

public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force to woman with intent to outrage her modesty.

354. Whoever assaults or uses criminal force to any

woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force with intent to dishonour person otherwise than on grave provocation.

355. Whoever assaults or uses criminal force to any

person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt to commit theft of property carried by a person.

356. Whoever assaults or uses criminal force to any

person in attempting to commit theft on any property which that person is then wearing or carrying shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt wrongfully to confine a person.

357. Whoever assaults or uses criminal force to any

person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year or with fine

which may extend to one thousand rupees, or with both.

S. 353.—Assault by accused on Head constable making search under orders of Sub-Inspector is an offence 9 M.L.T. 168. Where Revenue Inspector supervising Village Headman detaining under a named warrant was assaulted, accused guilty. 1924 M.W.N. 50, assault on officer arresting under illegal warrant not an offence 61, M. 873, assault on V. M. detaining wrong person's property got an offence A.L.R. 1924, M. 895. This section includes offence under S. 186 and separate convictions illegal. 1939. M.W.N. 418 Cr. 66; Where Deputy V. M. attached doors of the house of accused, no offence if Village Munsif assaulted. Much more so when the warrant was not a legal one. 1939 M.W.N. 725 Cr. 119. Bill Collector enforcing warrant for excess amount is not acting in lawful discharge. 1986 M.W.N. 638 Cr. 122. Where amin executing a warrant found illegal in the circumstances is assaulted no offence under this Section but under S. 352 1987 M.W.N. 176. Cr. 82. Where distraint proclamation need not be tom tommed assault on person tom tomming only an offence under S. 352. 1985, M.W.N. 1397 Cr. 241.

S. 354.—Pulling a woman by her hand and making overtures is an offence 1 Weir 347.

Assault of criminal force on grave provocation.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both.

Explanation.—The last section is subject to the same explanation as section 352.

Of Kidnapping, Abduction, Slavery and Forced Labour.

Kidnapping.

359. Kidnapping is of two kinds: kidnapping from British India, and kidnapping from lawful guardianship.

Kidnapping from British India.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from British India.

Kidnapping from lawful guardianship.

361. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Abduction.

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Punishment for kidnapping.

363. Whoever kidnaps any person from British India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting in order to murder.

364. Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(a) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

S. 361.—Explanation.—A *de facto* guardian with the approval of *de jure* guardian is a lawful guardian, 21 M.L.J. 540. A girl driven away by her father is not taken away from his guardianship, 1912 M.W.N. 538. “Enticing”, involves accused’s inducement to bring about willingness, A.I.R. 1928 M. 585. “Taking” involves an overt act by the accused, A.I.R. 1928 M. 585.

Exception.—Father taking away child from custody of mother by deceit is not an offence I.L.R. 1938 M. 805.

Kidnapping or abducting with intent secretly and wrongfully to confine person.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping, abducting or inducing woman to compel her marriage, etc.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; 1[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.]

2[366.A. Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.]

2[366.B. Whoever imports into British India from any country outside India any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person,

and whoever with such intent or knowledge imports into British India from any State in India any such girl who has with the like intent or knowledge been imported into India, whether by himself or by another person,

shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.]

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

S. 366.—Substantial offence is kidnapping or abduction and not seduction as in English Law. 1930 M.W.N. 905 (1) Cr. 209 (1). Minor child illegitimate is no defence to an offence under the section, 1935 M.W.N. 358 Cr. 62. Initial taking away of girl with consent of guardian and later on marriage is no offence, 36 M. 453.

1. These words were added by S. 2 of the Indian Penal Code (Amendment) Act, 1928 (20 of 1928).

2. This section was inserted by S. 3 *ibid.*

S. 367.—Actual force is required and not mere show or threat of force, 1937 M.W.N. 1193 Cr. 246.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

Wrongfully concealing or keeping in confinement, kidnapped or abducted person.

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting child under ten years with intent to steal from its person.

370. Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Buying or disposing of any person as a slave.

371. Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Habitual dealing in slaves.

372. Whoever sells, lets to hire, or otherwise disposes of any ¹[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Selling minor for purposes of prostitution, etc.

²[*Explanation I.*—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II.—For the purposes of this section “illicit intercourse” means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a *quasi*-marital relation.]

373. Whoever buys, hires or otherwise obtains possession of any ³[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for

Buying minor for purposes of prostitution, etc.

S. 370.—Sale as a slave is to be found expressly from the facts and conduct of parties. 41 M. 884.

S. 372.—Essentials “making over” necessary, 1918 M.W.N. 484. ‘Disposal’ connotes control over minor disposed of; mere direction to join a brothel not sufficient, A.I.R. 1925 M. 718.

1. These words were substituted by section 2 of the Indian Criminal Law Amendment Act, 1924 (18 of 1924).

2. These explanations were added by section 3 *ibid*.

3. These words were substituted by section 2 *ibid*.

S. 373.—Expl. 1. Adoption by dancing girl cannot by itself be declared invalid as the presumption under the section is a rebuttable one. 1936 M.W.N. 555.

any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

¹[*Explanation I.*—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II.—‘Illicit intercourse’ has the same meaning as in section 372.]

374. Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Unlawful compulsory labour.

Of Rape.

375. A man is said to commit “rape” who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :—

Rape.

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under ²[fourteen] years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under ²[thirteen] years of age, is not rape.

376. Whoever commits rape shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, ³[unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

Punishment for rape.

1. These explanations were added by section 4 of the Indian Criminal Law Amendment Act, 1924 (18 of 1924).

S. 375.—Conviction almost depends on credibility of woman other evidence being corroborative A.I.R. 1942 Mad. 285.

2. This word was substituted by section 2 of the Indian Penal Code (Amendment) Act, 1925 (29 of 1925).

3. These words were added by section 3 of the Indian Penal Code (Amendment) Act, 1925 (29 of 1925).

Of Unnatural Offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Unnatural
offences.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

Of Theft.

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Theft.

Explanation 1.—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations.

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

S. 378.—Rescuing buffaloes wrongly attached by Judgment debtors not theft, 1933 M.W.N. 110 Cr. 22. Removal of property illegally distrained in excess does not constitute theft 1934 M.W.N. 889 Cr. 161, 1941 M.W.N. 679. Driving away his cattle where they were taken to the pound by one who had no legal right to the crop they grazed not theft 1939 M.W.N. 470. Cr. 66. Where crop on land raised by lessee of accused after Court sale and delivery of Crop not ordered removal of crop not dishonest. 1946 M.W.N. 869 Cr. 109. Owner of house cannot complain of theft of trees in lessee's possession 1930 M.W.N. 914 Cr. 218. Mere digging at a Stupa to get at a stone is not attempt and merely preparatory to commit theft, 1935 M.W.N. 651 Cr. 115. Where heir of deceased removes cattle of deceased from another, through servants no theft 1944 M.W.N. 463, Cr. 46. Where property is attached by a man the mere fact that a claim petition is allowed does not give rise to an offence under the section 1941 M.W.N. 671, Cr. 75. Once water which was flowing becomes stagnant so that fish may not leave the water pond taking fish dishonestly is theft 36 M. 474, 1912 M.W.N. 728 Cr. 163, 51 M. 833. 1914 M.W.N. 163; taking possession of straying cattle due to cheetah scare is no offence, 1943 M.W.N. 583 Cr. 140. Theft of running water is an offence. 1912 M.W.N. 119. Removal of paddy by tenant stored by landlord in tenant's land not theft. 1914 M.W.N. 106. Removal by accused a joint owner of trees in his possession not an offence 1914 M.W.N. 483. Taking under bonafide claim not theft, 1943 M.W.N. 182, Rescuing cattle driven away by a man in execution is theft 1933 M.W.N. Cr. 90.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(m) A being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

380. Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

S. 380.—Owner removing cattle from pound without paying fee is guilty 1930 M. W. N. 529, Cr. 129 but rescuing cattle from pound enclosed by a fence an offence only under S. 379 A.I.R. 1927 M. 843.

381. Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft by clerk or servant of property in possession of master.

382. Whoever, commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.

Illustrations.

(a) A commits theft on property in Z's possession, and, while committing this theft, he has a loaded pistol under his garment having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

(Of Extortion.)

383. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion."

Extortion.

Illustrations.

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain money to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for extortion.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Putting person in fear of injury in order to commit extortion.

S. 381.—Abstraction of goods by cartman hired to carry goods is an offence under this section 1 Weir 437.

S. 383.—Injury should not be merely one which is threatened by Divine punishment. 43 M. 774.

S. 385.—More threat to report to authorities is not putting in fear of injury. 19 Cr. L.J. 445.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Extortion by putting a person in fear of death or grievous hurt.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other of having committed or attempted to commit any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be one punishable under section 377 of this Code, may be punished with transportation for life.

Extortion by threat of accusation of an offence punishable with death or transportation, etc.

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with transportation for life.

Putting person in fear of accusation of offence, in order to commit extortion.

Of Robbery and Dacoity.

Robbery.

390. In all robbery there is either theft or extortion.

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When theft is robbery.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

When extortion is robbery.

S. 390.—Meaning of "for that end." 18 Cr. L.J. 346. It is not necessary for extortion to constitute robbery that it should follow immediately upon the restraint provided that there is fear of restraint at the time of the commission of the offence. A.I.R. 1927 M. 307. It is not necessary that an accused should know the victims previously or have personal grievance against them. 1929 M.W.N. 194 Cr. 17. Force an essential ingredient 1981 M.W.N. 652; Cr. 182.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high-road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of his child.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity."

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise the imprisonment may be extended to fourteen years.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

S. 391.—If one of three named persons charged with dacoity was acquitted conviction of rest under this section bad. 1927 M.W.N. 853; 7 M.L.T. 840.

S. 394.—If hurt is caused to complainant trying to recover offence is under this section. A.I.R. 1925, M. 466, Enough if one of party causes hurt 1912 M.W.N. 37.

S. 395.—A conviction for dacoity on a common object not specifically charged is bad. A.I.R. 1924 Madras 584.

S. 396.—"Committing" includes carrying off property 17 M.L.J. 180.

397. If, at the time of committing robbery or dacoity, the offender uses

Robbery or dacoity, with attempt to cause death or grievous hurt.

any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

399. Whoever makes any preparation for committing dacoity, shall

Making preparation to commit dacoity.

be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

400. Whoever, at any time after the passing of this Act, shall belong

Punishment for belonging to gang of dacoits.

to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which

may extend to ten years, and shall also be liable to fine.

401. Whoever, at any time after the passing of this Act, shall

Punishment for belonging to gang of thieves.

belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of *thugs* or dacoits, shall be punished

with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

402. Whoever, at any time after the passing of this Act, shall be one

Assembling for purpose of committing dacoity.

of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and

shall also be liable to fine.

Of Criminal Misappropriation of Property.

403. Whoever, dishonestly misappropriates or converts to his own

Dishonest misappropriation of property.

use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a) A takes property belonging to Z out of Z's possession in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B, being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

S. 397.—Use of the weapon need not be against the person robbed but to frighten persons coming to rescue 1941 M.W.N. 384 Cr. 47. Use of a deadly weapon includes weapon being carried or employed to overawe and need not necessarily be used 1933 M.W.N. 727 Cr. 118. Actual infliction of injury not necessary 1938 M.W.N. 215 Cr. 81.

S. 403.—Bull dedicated to temple but allowed to roam at large is property, 1 L.L.R. 11 Mad. 145. Mere retention of money without using the same is not an offence, 1940 M.W.N. 1110 Cr. 154; 2 Cr. L.R. 132.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations.

(a) A finds a rupee on the high-road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z, dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

S. 404.—Section does not apply to persons taking from deceased's possession under claim. 1914 M.W.N. 791; A.I.R. 1927 M. 408. Mere repudiation of obligation to pay money is not criminal, 1930 M.W.N. 790 Cr. 82. Ingredients of the offence. 'Meaning of 'entrusted' 1936 M.W.N. 281 Cr. 49 (F.B.). The word "Legal Contract" does not include "Wagering Contract", A.I.R. 1927 M. 425.

Of Criminal Breach of Trust.

405. Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do commits "criminal breach of trust".

Illustrations

(a) A, being executor to the will of a deceased person dishonestly disobeys the law which directs him to divide the effects according to the will and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse keeper. Z going on a journey entrusts his furniture to A under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A residing in Calcutta is agent for Z residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A in the last illustration not dishonestly but in good faith believing that it will be more for Z's advantage to hold shares in the Bank of Bengal for instance, disobeys Z's directions and buys shares in the Bank of Bengal for instance, A is not guilty of criminal breach of trust though Z should suffer loss and should be entitled to bring an action against A on a contract of that loss, yet A not having acted dishonestly has not committed criminal breach of trust.

(e) A a revenue officer entrusted with public moneys and is either directed by law or bound by a contract (express or implied) with the Government to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A a carrier is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

407 Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

S. 405—Immovable property not subject matter of a charge under this section, 1982 M.W.N. 1958 Cr 277. If mortgagor left Money with mortgagee accused to meet demands and if mortgagee refuses to pay no offence 1984 M.W.N 788 Cr 146. Meaning of "entrusted" 1985 M.W.N. 914, Cr 154 also 1986 M.W.N. 281 Cr 49. A pledgee sub pledging to the extent of his interest commits no offence 1 L.B 1998 M. 639. Mere repudiation of obligation to pay money is not an offence, 1930 M.W.N 790 Cr 82. Ingredients of the offence. Meaning of "entrustment", 1936 M.W.N 281 Cr 49 (F.B). The word "Legal contract" does not include "Wagering contract", A.L.B. 1937 M. 425.

S. 407—Ingredients of offence. 1928 M.W.N. 791. Alien director of alien company realising money before declaration of war by itself does not amount to an offence. 1941. 2 M.L.J. 748.

408. Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

409. Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Of the Receiving of Stolen Property

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which ¹* criminal breach of trust has been committed, is designated as "stolen property," ²[whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India]. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

S. 408.—Offence does not fall within the scope of S. 562 Cr. P.C. 1934 M.W.N. 2183 Cr. 235; also, 1945. 2 M.L.J. 575.

S. 409.—Essentials of the offence entrustment necessary. 1911 M.W.N. 399 Cr. 79. Misappropriation of money order by a postman falls under this section and sanction is necessary for prosecution, 1910 M.W.N. 1116 Cr. 190. When a servant authorised to lend out master's money and if he lends to himself the money entrusted with him he commits an offence under this section, 1933 M.W.N. 256 Cr. 48. This section calls for sentence of imprisonment. Mere sentence of fine is bad, 1935 M.W.N. 471 Cr. 90. Whether misappropriation can be properly inferred is a question of fact. It is not an inference which the Court is bound by law to draw, 1936 M.W.N. 491 Cr. 89. The fact that a person has failed to account for the money entrusted to him by itself is not sufficient to prove dishonest misappropriation even though he has not discharged his liability to account 1936 M.W.N. 825 Cr. 149. The gist of the offence is dishonest misappropriation and the burden lies on the prosecution to prove such misappropriation by direct evidence or evidence of circumstances which leads to a reasonable inference of such misappropriation. 1936 M.W.N. 828 Cr. 152. See also 1936 M.W.N. 1019 Cr. 189. The mere fact that the accused has failed to explain suspicious entries in the accounts is not sufficient for the prosecution on whom the burden rests of proving criminal misappropriation under this section, 1937 M.W.N. 566 Cr. 126. Where the only evidence against the accused is of a false entry which does not tally with the facts of the prosecution and the plea of the accused that it was due to a clerical error not sufficient to convict him of the offence, 1937 M.W.N. 992 Cr. 208. A partner can be convicted of criminal breach of trust under this section with regard to misappropriation of partnership property, 1939 M.W.N. 1252 Cr. 196. Where there is no clear proof that there has been a specific entrustment of the property to the accused in his capacity as an accountant, this will not amount to an offence under this section, 1931 M.W.N. 399 Cr. 79. A postmaster handing over a V. P. letter to addressee without receiving payment *prima facie* commits the offence, A.I.R. 1927 M. 626. Retention by V. M. of small sums for short period before remitting to treasury is no offence under the section. 1941 M.W.N. 667 Cr. 71. Mere delay when no time fixed for payment A.I.R. 1930 M. 50. But long delay is strong circumstance of this offence A.I.R. 1926 Mad. 727. Where agent of moneylending firm disposes of jewels pledged contrary to his contract he is not guilty under this section 1941 M.W.N. 477 Cr. 81.

1. The words were repealed by the Amending Act, 1891 (12 of 1891), and the Indian Penal Code (Amendment) Act, 1882 (8 of 1882).

2. These words were inserted by S. 9 of the Indian Penal Code (Amendment) Act, 1892 (8 of 1892).

411. Whoever dishonestly receives or retains any stolen property knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

414. Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Of Cheating

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any

S. 411.—Mere suspicion that property might have been stolen not enough 1918 M.W.N. 697. Only a dishonest retention or receipt of stolen property is made liable under this section. 59 M. 995. Prosecution has to prove not merely possession but possession with knowledge and in deciding whether there was the requisite knowledge regard must be had to the state of the accused and antecedents of the accused which may rebut the presumption as to knowledge. 1937 M.W.N. 327 Cr. 55. Where stolen property was pledged with accused and where transaction was not one of sale the conviction of the accused under this section cannot be sustained. 1939 M.W.N. 413 Cr. 57. The mere fact that accused was with a receiver of stolen property before and after the alleged time of theft is not sufficient to warrant a conviction under this section. 1939 M.W.N. 739 Cr. 103. The mere fact that a person shows where the stolen property is hidden even though he does not satisfactorily explain as to how he came by the property is not enough to justify a conviction under this section much more so when the theft is said to have been committed by more than one person. 1935 M.W.N. 48 Cr. 9. It is not possible for the prosecution to prove what is in the mind of the accused but possession of stolen property knowing it to be stolen is sufficient to infer dishonest intention. 1938 M.W.N. 1124 Cr. 204. Section extends to property which has been criminally misappropriated and the presumption that a person who is in possession of such property soon after the misappropriation must have known it is stolen property. 1945 M.W.N. 107 Cr. 23, dissenting from 1943 M.W.N. 580 Cr. 141. Where only circumstance was that wife of accused produced stolen articles this does not warrant a conviction under this section 1941 M.W.N. 479 Cr. 50. Where considerable time has elapsed between theft and discovery of stolen property possession of that property does not require any explanation. 1912 M.W.N. 529; 1912 M.W.N. 362; A.I.R. 1923 M. 365.

S. 414.—Where accused assisted another to pledge jewels entrusted to him he cannot be convicted of an offence under this section. 1936 M.W.N. 493 Cr. 85.

S. 415.—"Delivery to any persons" includes delivery to an agent and the Post Office may be deemed to be an agent of the addressee on a V. P. P. transaction 1927 M.W.N. 221. Cheating by issue of fraudulent prospectus ingredients of the offence 1944 M.W.N. 312 Cr. 50. Concealment of facts only arises where there is a duty to disclose. 18 Cr. L.J. 40. Where ledger clerk of Tea Licence Committee made entries to enable owner of Tea estate to transfer export of tea in excess of the quota to the credit of his estate, he is guilty under this section. 1939 M.W.N. 1125 Cr. 165.

property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat."

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

416. A person, is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Cheating by personation.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for cheating.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound either by law, or by legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.

S. 416.—A obtaining hall ticket under B's name and signing answer books with B's name is guilty 12 M. 151.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating by personation.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

Cheating and dishonestly inducing delivery of property

Of Fraudulent Deeds and Dispositions of Property.

421. Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly or fraudulently preventing debt being available for creditors.

423. Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either

Dishonest or fraudulent removal or concealment of property.

S. 420.—A recital in a mortgage deed that there are no prior encumbrances if such recital is untrue constitutes cheating 1936 M.W.N. 1006 Cr. 196. Where complainant promised to execute mortgage of his properties and in fact executed a gift deed in favour of his wife which has registered long after his promise no cheating at the time of his making the promise 1936 M.W.N. 296 Cr. 44. Where accused deceived a person into believing that jewels had been pledged and in fact no pledge the offence is one of cheating 1937 M.W.N. 729 Cr. 158. Obtaining money by threat of Divine punishment is cheating 48 M. 774.

S. 424.—Where an attachment of crops in execution is invalid in law accused took away the crops knowing they were attached to prevent decree holder is guilty of an offence under this section. 1933 M.W.N. 493 Cr. 84. Dishonest harvesting and removal of crop by night is an offence within the scope of this section. 1981 M.W.N. 1049 Cr. 213. A tenant removing the crops without giving the landlord his share is an offence. 1983 M.W.N. 629 Cr. 118.

description for a term which may extend to two years, or with fine, or with both.

Of Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof, as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

426. Whoever commits mischief shall be punished with imprisonment for a term which may extend to three months, or with fine, or with both.

427. Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

S. 425.—If accused *bona fide* believed that he had a right to do what he had, even in law if he had not such a right he cannot be convicted under this section. 1989 M.W.N. 315 Cr. 39. The owner of a property over which another person has got a right of passage interferes with the user of such path it is not mischief under this section. Property under the section does not include an easement right. 1930 M.W.N. 909 Cr. 213. Water taking for irrigation under a *bona fide* claim of right by cutting a bund is mischief, 1935 M.W.N. 362 Cr. 65. Grazing cattle on Government land is an offence under this section 1 Weir 492, 52 M. 161. To remove support, to adjoining premises is not unlawful A.I.R. 1921 M. 322. Allowing his cattle to graze on another man's land is mischief. 1942 M.W.N. 756 Cr. 75.

S. 427.—Removal of part of a neighbour's roof which accused considered *bona fide* an encroachment is not an offence under this section. 1933 M.W.N. 645 Cr. 125. Where accused demolished the terrace and walls of a building of another on the ground it is an encroachment on the public street he is guilty under this section. 1933 M.W.N. 905 Cr. 150. Where accused pulled down the walls raised by complainant to site claimed by villagers no offence under this section as ownership of the site is not definite. 1989 M.W.N. 1254 Cr. 198.

428. Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming animal of the value of ten rupees.

429. Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.

430. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation or by wrongfully diverting water.

431. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to public road, bridge, river or channel.

432. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing inundation or obstruction to public drainage attended with damage.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying, moving or rendering less useful a light-house or sea-mark.

S. 428.—Cutting the ears of an ass completely so as to affect its hearing is an offence 18 Cr. L.J. 620; of a horse 35 M. 594.

S. 430.—Where accused cut down a bund for diverting water anticipating for a permit allowing him to do so no offence under this section was committed. 1920 M.W.N. 131. Causing diminution of water to the lands of other ryots is an offence 1912 M.W.N. 841. Diverting irrigation channel causing loss to another is an offence 1939 M.W.N. 121 Cr. 9, also 34 M.L.J. 206. Where accused prevented complainant from opening a sluice which has been closed for some time he is not guilty 1939 M.W.N. 1224 Cr. 192. To put a bund across a supply channel which feeds a tank is punishable under this section 1938 M.W.N. 427 Cr. 73 also 1913 M.W.N. 634.

- 434.** Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by destroying or moving, etc., a land-mark fixed by public authority.

- 435.** Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards ¹[or (where the property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.

- 436.** Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to destroy house, etc.

- 437.** Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.

Punishment for the mischief described in section 437 committed by fire or explosive substance.

- 438.** Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

- 439.** Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property, may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.

- 440.** Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Mischief committed after preparation made for causing death or hurt.

1. These words were inserted by S. 10 of the Indian Penal Code, (Amendment) Act, 1892 (§ of 1892).

S. 436.—A grass or a mat hut which is used as a cattle shed is a building within the scope of this section, 1989 M.W.N. 687 Cr. 127.

Of Criminal Trespass.

441. Whoever enters into or upon property in the possession of another
Criminal trespass. with intent to commit an offence or to intimidate, insult
or annoy any person in possession of such property,

or, having lawfully entered into or upon such property, unlawfully
remains there with intent thereby to intimidate, insult or annoy any such
person, or with intent to commit an offence,

is said to commit "criminal trespass."

442. Whoever commits criminal trespass by entering into or remaining
in any building, tent or vessel used as a human dwelling or
House trespass. any building used as a place for worship, or as a place for
the custody of property, is said to commit "house-trespass."

Explanation.—The introduction of any part of the criminal trespasser's
body is entering sufficient to constitute house-trespass.

443. Whoever commits house-trespass having taken precautions to
conceal such house-trespass from some person who has a
Lurking house- right to exclude or eject the trespasser from the building,
trespass. tent or vessel which is the subject of the trespass, is said to
commit "lurking house-trespass."

444. Whoever commits lurking house-trespass after
Lurking house- sunset and before sunrise, is said to commit "lurking
trespass by night. house-trespass by night."

445. A person is said to commit "house-breaking" who commits
house-trespass if he effects his entrance into the house or
House breaking. any part of it in any of the six ways hereinafter described ;
or if, being in the house or any part of it for the purpose of committing an
offence, or, having committed an offence therein, he quits the house or any
part of it in any of such six ways, that is to say :—

First.—If he enters or quits through a passage made by himself, or by
any abettor of the house-trespass, in order to the committing
of the house-trespass.

S. 441.—Entry with the consent of person who asserts *bona fide* claim to property is no
offence, A.I.R. 1924 M. 862; 1926 M. 349. An entry on a land in another man's possession solely
in order to assert a right in the land does not constitute an offence under this section, 1912
M.W.N. 396. A trespass by an accused on the land of the complainant in order to forcibly prevent
the latter from harvesting the crops cultivated by the accused is not an offence, 1915 M.W.N. 275.
Even if a person enters the property in possession of another with an intention other than to
intimidate, insult or annoy the person but with the knowledge that his presence is likely or
certain to cause annoyance or insult to that person in possession is not guilty under this section.
41 M. 156 (F.B.). A person who enters the house of another and assaults the servant of the
house, it can be presumed that he intended to cause annoyance, etc., 35 M. 186. Entry by a
customer into a shop to verify whether he has correct measures is not criminal trespass, 1944
M.W.N. 498 Cr. 118. Presumption of trespass likely to annoy owner lies only when the main
intention of accused is to annoy the landlord, 1987 M.W.N. 528 Cr. 91. Intention must be expressly
found, 1985 M.W.N. 1290 Cr. 284. Any entry in *bona fide* belief in his claim of right is not an
offence 1987 M.W.N. 850. (r. 70 Possession may be constructive possession and not merely
physical one. So even where the person in actual possession of property is absent trespass an
offence under this section can be committed, 54 M. 515 also, 1981 M.W.N. 328 Cr. 64.

S. 445.—Even though the Court does not find specifically as to the offence the accused
intended to commit, he can still be held guilty of an offence under this section, 1911 (2)
M.W.N. 71.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between docks. This is house-breaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

446. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night."

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

453. Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

454. Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

455. Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

457. Whoever commits lurking house-trespass by night or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

458. Whoever commits lurking house-trespass by night or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint,

term which may extend to fourteen years, and shall also be liable to fine.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

461. Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or in which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly breaking open receptacle containing property.

462. Whoever, being entrusted with any closed receptacle which contains, or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

463. Whoever makes any false document or part of a document, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Forgery.

Making a false document.

464. A person is said to make a false document—

S. 464.—A document is "made" even if some of the executants sign and the document is binding on them. Where intention of accused is to secure something he is legally entitled to or *bona fide*, believes so he is not guilty under the section, 41 M. 589: 1915 M.W.N. 278; but see A.I.R. 1926 M. 1072. Mere presence of initial of accused at the bottom of forged document not sufficient to convict him under the section, 1914 M.W.N. 363. Signing the name of an idol and getting pattach in that name to himself forgery is committed by a person, 1913 M.W.N. 713 Cr. 176.

First.—Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed ; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration ; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

Illustrations.

(a) A has a letter of credit upon B for rupees 10,000 written by Z A, in order to defraud B, adds a cipher to the 10,000 and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent a cheque on a banker, signed by, A without inserting the sum payable and authorises B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill. A is guilty of forgery.

(f) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order", and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made false document in order to induce Z to part with property, A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable. Here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate, to Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

465. Whoever commits forgery shall be punished with imprisonment

Punishment for of either description for a term which may extend to two years, or with fine, or with both.

466. Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth,

Forgery of record of Court or of public register, &c.

baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an

authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which

Forgery of valuable security, will, &c.

purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money,

moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

S. 467.—Merely filling up a blank paper with a signature on without any deceit not an offence, 1932 M.W.N. 117 Cr. 21. Attestors to a forged valuable security can plead that they had no dishonest intention, 1939 M.W.N. 514 Cr. 86.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Forgery for purpose of cheating.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Forgery for purpose of harming reputation.

470. A false document made wholly or in part by forgery is designated "a forged document."

Forged document.

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

Using as genuine a forged document.

472. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punishable with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467.

473. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.

474. Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

Having possession of document described in sections 466 or 467, knowing it to be forged and intending to use it as genuine.

S. 470.—Copy of a document alleged to be false is not a false document 7 M.L.T. 428.

S. 471.—User may be even if the document may ultimately be used 1 Weir 550. Mere production in answer to Court summons not user under the section 36 M. 387, 392. A process server filing false *ataakahi* with forged signature is guilty under the offence 42 M. 558. Separate sentences for forgery and for using under the section legal 52 M. 532.

475. Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

476. Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

1[477A.] Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed].

S. 477.—The document need not necessarily in law be a valuable security. 12 M. 148. Erasure of thumb impressions in books of account filed in Court amounts to an offence under this section. 1936 M.W.N. 489 Cr. 81.

1. S. 477A was added by S. 4 of the Criminal Law (Amendment) Act, 1895 (8 of 1895). . .

Of Trade, Property and Other Marks.

1[478. For the purposes of this Code, the expression "trade mark" includes a trade mark registered under the Trade Marks Act, 1940, and any mark used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right to use the mark.]

Property mark. **2[479.** A mark used for denoting that moveable property belongs to a particular person is called a property mark.

480. Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, ^{3]} have a connection in the course of trade with a person with whom they have not any such connection], is said to use a false trade mark.

481. Whoever marks any moveable property or goods or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

482. Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

483. Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

484. Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

485. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person

1. S. 478 was substituted by S. 12 of the Indian Merchandise Marks (Amendment) Act, 1941 (2 of 1941) (when notified).

2. Ss. 479 to 489 were substituted for the original sections by S. 3 of the Indian Merchandise Marks Act, 1889 (4 of 1889).

3. These words were substituted by S. 13 of the Indian Merchandise Marks (Amendment) Act, 1941 (2 of 1941).

whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

486. Whoever sells, or exposes, or has in possession for sale or any purpose of trade or manufacture, any goods or thing with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

Selling goods marked with a counterfeit trade mark or property mark.

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Making a false mark upon any receptacle containing goods.

488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Punishment for making use of any such false mark.

489. Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both].

Tampering with property mark with intent to cause injury.

Of Currency-Notes and Bank-Notes.

1[489A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Counterfeiting currency-notes or bank-notes.

S. 486.—Mere signature on forwarding note despatching goods with counterfeit trade marks is not proof of possession 1940 M.W.N. 535; Cr. 75.

1. Ss. 489A to 489D were inserted by S. 2 of the Currency Notes Forgery Act, 1899 (12 of 1899); applied to notes issued under Ordinance IV of 1940, S. 4.

Explanation.—For the purpose of this section and of sections 489B, 489C and 489D, the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money.

489B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489C. Whoever has in his possession any forged or counterfeit currency-note, or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

489D. Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.]

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490. [*Breach of contract of service during voyage or journey.*] Repealed by section 2 and Schedule of Act III of 1925.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees or with both.

492. [*Breach of contract to serve at distant place to which servant is conveyed at master's expense.*] Repealed by section 2 and Schedule of Act III of 1925.

S. 489C.—The number of counterfeit notes found on a person is circumstantial evidence of his intention to use them as genuine 1938 M.W.N. 1121 Cr. 201.

S. 489D.—Essentials.—Onus is on prosecution to prove the accused had in his mind "the purpose". 21 M.L.J. 766.

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Co-habitation caused by a man deceitfully inducing a belief of lawful marriage.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Marrying again during lifetime of husband or wife.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage shall, have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

495. Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

496. Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Marriage ceremony fraudulently gone through without lawful marriage.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

Adultery.

S. 494.—A custom of a second marriage of a woman during the life time of her husband and the subsistence of the marriage with him cannot be recognised by courts of law as a defence under this section. 1932 M.W.N. 1032 Cr. 222. Much more when custom is not part of the personal law. Christian accused may plead in defence first marriage null and void though he has obtained declaration under the Divorce Act. 1945 M.W.N. 421 Cr. 78.

S. 497.—Mere birth of a child to a married woman 2 yrs. after she left her husband is not sufficient for a conviction under this section. 1935 M.W.N. 478 Cr. 94.

498: Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other

Enticing or taking away or detaining with criminal intent a married woman.

man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with

imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XXI.

OF DEFAMATION.

499. Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any

Defamation.

imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives:

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(a) A says—"Z is an honest man; he never stole B's watch": intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Imputation of truth which public good requires to be made or published.

S. 499.—Scope of explanation (4)—Imputation of ex-communication from the caste falls within this explanation. A.I.R. 1937 M. 397. Publication—Positive proof of publication and reference to the complainant essential. A.I.R. 1924 M. 840. Moral maxim as to ingratitude inscribed on the envelope is not defamation *per se*. 1928 M.W.N. 918. A statement to the effect that a person is often changing his opinion to suit circumstances in politics is defamation 1931 M.W.N. 714 Cr. 138 Communication to members of community that a person will be out caste is an offence 1939 M.W.N. 127 Cr. 15. Publication to one of the members of a conspiracy to defame is not publication 1931. M.W.N. Cr. 85.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Public conduct of
public servants.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Conduct of any
person to being
any public question.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Publication of
proceedings of
Courts.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Merits of case
decided in Court or
conduct of witnesses
and others concerned.

Illustrations.

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity", A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Merits of public
performance.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

S. 499.—Exception 2.—A pamphlet issued on the eve of an election to warn the voters about a candidate comes within this exception, 1984 M.W.N. 258 Cr. 45.

Exception 3.—Plea of good faith may be refuted by proof of recklessness, 1944 M.W.N. 322 Cr. 90.

Illustrations.

- (a) A person who publishes a book, submits that book to the judgment of the public.
 (b) A person who makes a speech in public, submits that speech to the judgment of the public.
 (c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.
 (d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man; Z's book is indecent; Z must be a man of impure mind." A is within this exception, if he says this in good faith inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.
 (e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Censure passed in good faith by person having lawful authority over another.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for misconduct in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Accusation preferred in good faith to authorised person.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Imputation made in good faith by person for protection of his or other's interests.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

S. 499.—Exception 8.—Complaint to police containing the statement is privileged, 1936 M.W.N. 1989 Cr. 243; 1938 M.W.N. 87 Cr. 155. Defamatory statements in complaint to magistrate not absolutely privileged, 49 M. 728 (F.B.) overruling, 37 M. 110.

Exception 9.—Statement by counsel *prima facie* defamation. Presumption of *bona fide*. Proof of malice overrides presumption, 50 M. 637, but see 10 M. 28 (F.B.). Complaint by a committee of a club to the husband about breach of rule by wife privileged to use the club made in good faith protected under the exception, I.L.R. 1945 M. 742—1945 M.W.N. Cr. 47. An opinion in good faith and for public good after due care and caution falls within this section, 1944 M.W.N. 393 Cr. 90. Truth of the allegation need not be proved in case privilege is claimed under this exception, 1935 M.W.N. 365 Cr. 69. See 1914 M.W.N. 500 (P.C.). Statement in a notice comes within the exception, A.L.R. 1925 M. 246. A statement made before Registrar in the course of registering a document is not a privileged statement, 23 M.L.J. 50 (F.B.). Statement of accused in answer to a question by the Court is absolutely privileged, 28 M.L.J. 89 (F.B.). A pleader putting a question in cross examination imputing immorality to a witness without any private malice and on instructions from the client is privileged under this section, 1934 M.W.N. 481 Cr. 81; 1935 M.W.N. 460 Cr. 76; 1936 M.W.N. 480 Cr. 81, 1937 M.W.N. 1195 Cr. 243. Where a statement made to a Police officer in course of investigation is defamatory, privilege can be pleaded under this exception, 1938 M.W.N. 217 Cr. 88. Communication to other caste Saba about ex-communication of a member of a Saba is publication protected by this exception 47 M.L.J. 8. Statement of a witness in reply to a question by counsel is not absolutely privileged but of qualified privilege. 52. M. 432.

Illustrations.

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Caution intended for good of person to whom conveyed or for public good.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Punishment for defamation.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Printing or engraving matter known to be defamatory.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Sale of printed or engraved substance containing defamatory matter.

CHAPTER XXII.

(OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.)

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Intentional insult with intent to provoke breach of the peace.

S. 500.—Charge should specify the passages libellous, 1931 M.W.N. 407 Cr. 87.

S. 503.—Where accused fired a shot in the air to scare away the police party in order to prevent seizure of revolver, guilty under the section. 1931 M.W.N. 861 Cr. 189.

S. 504.—Essentials. 39 M 561 where the words of insult are not disclosed conviction bad. 1940, M.W.N. Cr. 57 words not constituting international insult. See 1935 M.W.N. Cr. 146; 1940 M.W.N. 890 Cr. 58. Mere insult not an offence, 1942 M.W.N. Cr. 105. Abuse of a person not present not an offence. 1941 M.W.N. 873 Cr. 31. Insult, gross insult is by itself not an offence if no likelihood of breach of peace, 1942 M.W.N. 457 Cr. 102.

Ss. 505-507] INTIMIDATION BY ANONYMOUS COMMUNICATION 121

Statements con-
ducting to public
mischief.

1[505. Whoever makes, publishes or circulates any statement, rumour or report,—

- (a) with intent to cause, or which is likely to cause, any officer, soldier, ²[sailor or airman] in the Army, ³[Navy or Air Force] of Her Majesty. ⁴* * * or in the Imperial Service Troops to mutiny or otherwise disregard or fail in his duty as such; or
- (b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or
- (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.]

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

1. This section was substituted for the original section by S. 6 of the Indian Penal Code Amendment Act, 1898 (4 of 1898).

2. These words were substituted for the words "or sailor" by S. 2 and first Schedule of the Repealing and Amending Act, 1927 (10 of 1927).

3. These words were substituted for the words "or, navy", *ibid.*

4. The words "or in the Royal Indian Marine" were omitted by S. 2 and Schedule of the Amending Act, 1934 (85 of 1934.)

S. 507.—Ability on the part of the accused to carry out the threat offered essential. Threat of divine punishment no offence under this section 49 M. 774.

508. Whoever voluntarily causes or attempts to cause any person to do

Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure.

anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempt to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of

Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations.

(a) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

509. Whoever, intending to insult the modesty of any woman, utters

Word, gesture or act intended to insult the modesty of a woman.

any word, makes any sound or gesture or object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple

imprisonment for a term which may extend to one year, or with fine, or with both.

510. Whoever, in a state of intoxication appears in any public place,

Misconduct in public by a drunken person.

or in any place which it is a trespass in him to enter, and there conducts himself in such manner as to cause annoyance to any person, shall be punished with simple imprisonment

for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

CHAPTER XXIII.

OF ATTEMPTS TO COMMIT OFFENCES.

511. Whoever attempts to commit an offence punishable by this Code

Punishment for attempting to commit offences punishable with transportation or imprisonment.

with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a

term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

S. 511.—Travelling with opium to hand over in French territory is only preparation and not an offence under Dangerous Drug Act, 1932 M.W.N. Cr. 97.

THE
Indian Evidence Act

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THE INDIAN EVIDENCE ACT

(ACT No. I OF 1872)

WHEREAS it is expedient to consolidate, define and amend the Law of
Preamble. Evidence; It is hereby enacted as follows:—

PART I.—Relevancy of Facts.

CHAPTER I.

PRELIMINARY.

Short title. 1 This Act may be called the Indian Evidence Act,
1872.

Extent. It extends to the whole of British India¹, and applies to all judicial
proceedings in or before any Court, including Courts-martial
²[Other than courts-martial convened under the Army Act]
³[the Naval Discipline Act or that Act as modified by the Indian Navy
(Discipline) Act 1934, ⁴[or the Air Force Act] but not to affidavits presented
to any Court or officer, nor to proceedings before an arbitrator;

Commencement of Act. and it shall come into force on the first day of September,
1872.

Repeal of enactments. 2. [Repealed by Act I of 1938] Sec. 2 and Schedule.

Interpretation clause. 3. In this Act the following words and expressions
are used in the following senses, unless a contrary intention
appears from the context—

"Court." "Court" includes all Judges and Magistrates, and all
persons, except arbitrators, legally authorized to take
evidence.

"Fact." "Fact" means and includes—

- (1) any thing, state of things, or relation of things
capable of being perceived by the senses;
- (2) any mental condition of which any person is
conscious.

1. This act has been declared in force in Upper Burma, Arakan Hill Tracts, British Baluchistan, Santhal Parganas, Angul District, Chittagong Hill tracts, Kachin Hill-tracts, Glin Hills, Panth Piploda, and in the following Schedule Districts viz., Hazaribagh, Lohardaga (now the Ranchi District) and Manbhum and Pargana Dhalbhum and Kolhan in Singhbhum District the Talai of the Province of Agra and Ganjam and Vizagapatam.

2. These words were inserted by Repealing and Amending Act 1919. (18 of 1919.)

3. These words were inserted by Amending Act 1934. (85 of 1934.)

4. These words were inserted by Repealing and Amending Act 1927. (10 of 1927.)

Illustrations.

- (a) That there are certain objects arranged in a certain order in a certain place, is a fact.
- (b) That a man heard or saw something, is a fact.
- (c) That a man said certain words, is a fact.
- (d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
- (e) That a man has a certain reputation, is a fact.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Relevant." with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue." The expression "facts in issue" means and includes—
any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue:—

- that A caused B's death;
- that A intended to cause B's death;
- that A had received grave and sudden provocation from B;
- that A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing is a document:

Words printed, lithographed or photographed are documents:

A map or plan is a document.

An inscription on a metal plate or stone is a document:

A caricature is a document.

"Evidence." "Evidence" means and includes—

- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry:
such statements are called oral evidence;
- (2) all documents produced for the inspection of the Court:
such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Proved." the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

-A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Not proved." A fact is said not to be proved when it is neither proved nor disproved.

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and "May presume." until it is disproved or may call for proof of it:

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until "Shall presume." it is disproved:

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as "Conclusive proof". proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II.

OF THE RELEVANCY OF FACTS.

Evidence may be given of facts in issue and relevant facts.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.¹

Illustrations.

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:—

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.¹

Relevancy of facts forming part of same transaction

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

1. Act 5 of 1908.

3. 6.—Statement made by victim of rape shortly after departure of accused is not relevant not being *res gestae* 1980 M.W.N. 702; Cr. 158. Leading Case R. v. Lillyman 1896, 2 Q. B. 167. Where offence is one of preferring false complaint what happened in investigation subsequently is not *res gestae*. 48 Mad. 640.

6.

(b) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and jails are broken open. The occurrence of these facts are relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence of transaction, are relevant.

Facts which are the occasion, cause or effect of facts in issue.

Illustrations.

(a) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(a) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

S. 8.—Statement by victim in a rape case made soon after the offence is not admissible, 1930 M.W.N. 733 Cr. 159 following, 1933; 2 Q.B. 167. Evidence of object of association and of membership of the accused is admissible to prove motive; as also the recovery of the rules and preparation for crime, 1934 M.W.N. 73; Cr. 17. That accused gave a false name at the time of arrest is not admissible as explanatory of conduct, 1935 M.W.N. 83 Cr. 19. Statements of accused before Registrar at the time of registering forged sale deed are admissible as explaining conduct of accused, 1938 M.W.N. 96 Cr. 8. Discovery of a witness on accused's statement not admissible, 1984 M.W.N. 601 Cr. 106.

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is whether a certain document is the will of A.

The facts that not long before the date of the alleged will A made inquiry into matters to which the provision of the alleged will related; that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence— "the police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

(g) The question is, whether A owes B rupees 10,000

The fact that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts.

(h) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or
as corroborative evidence under section 157.

(k) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or
as corroborative evidence under section 157.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Facts necessary to explain or introduce relevant facts.

Illustrations.

(a) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 8, as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d) A sues B for inducing C to break a contract of service made by him with A. C. on leaving A's service says to A—"I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it—"A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an

Things said or
done by conspirator
in reference to com-
mon design.

actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by

any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The fact that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not
otherwise relevant
become relevant.

11. Facts not otherwise relevant are relevant—

- (1) if they are inconsistent with any fact in issue or relevant fact ;
- (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(a) The question is whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question, is whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D, is relevant.

S. 10.—A statement by one conspirator in the absence of the other with regard to acts done in pursuance of conspiracy, after it has been completed is not admissible. Common intention is that existing at the time when the thing was said done or written, 1940 M.W.N. 1112 Cr. 156 (P.C.) referred in 1946 M.W.N. Cr. 11. A 'conspiracy' under the section contemplates something more than the joint action of two or more persons. 1936 M.W.N. 627 Cr. 111. A letter from co-conspirator is admissible under this section if the common intention existed on the date of the letter, 1944 M.W.N. 57 Cr. 86.

In suits for damages, facts tending to enable Court to determine amount, are relevant.

12 In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant :—

(a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence :

(b) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

¹*Explanation 1.*—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

¹*Explanation 2.*—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustrations.

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

1 (b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

(c) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

1. These were substituted by S. 1 of Indian Evidence Act (1872) Amendment Act 1891 (Act 8 of 1891).

S. 14.—In a prosecution under S. 304A. I.P.O. previous rash driving is not admissible 1929 M.W.N. 895 Cr. 69.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g) A is sued by B for the price of work done by B, upon a house of which A is owner by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant as showing that the fact that A knew of the notice did not disprove A's good faith.

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's having previously shot at B may be proved.

(j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(m) The question is, what was the state of A's health at the time an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(p) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

15. When there is a question whether an act was accidental or intentional, ¹[or done with a particular knowledge or intention], the fact that such act formed part of series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Facts bearing on question whether act was accidental or intentional.

1. These words were inserted by S. 2 of the Indian Evidence Act (1873) Amendment Act 1891 (Act III of 1891).

Illustrations.

(a) A is accused of burning down his house in order to obtain money for which it is insured. The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fire A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false and that the false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Existence of course of business when relevant.

Illustrations.

(a) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

ADMISSIONS.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission defined.

18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

Admissions by party to proceeding or his agent;

by suitor in representative character;

Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

by party interested in subject-matter;

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested; or

by person from whom interest derived;

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Admissions by person whose position must be proved as against party to suit.

Illustrations.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

Statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is whether a horse sold by A to B is sound. A says to B—"Go and ask C. C knows all about it." C's statement is an admission.

21. Admissions are relevant and may be proved as against the person

Proof of admissions against persons making them and by or on their behalf.

who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(c) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

S. 21.—Statements made by police officers in an administrative enquiry by the Magistrate are admissible as admissions under this section. - 1941 M.W.N. 505. Cr. 58.

22. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

When oral admissions as to contents of documents are relevant.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Admissions in civil cases when relevant.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

Confession to police officer not to be proved.

25. No confession made to a police-officer shall be proved as against a person accused of any offence.

Confession by accused while in custody of police not to be proved against him.

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

S. 23.—is limited to Civil cases. A talk of compromise is admissible in criminal cases, 19,6 M.W.N. 216. (r 40)

S. 24.—See Rule 85 (Criminal Rules of Practice as to mode of recording confession to satisfy that confession is not excluded by the section. This is a rule of exclusion. For admission of evidence, no express decision is necessary, 1938 M.W.N. 1120 Cr. 200. See also 1941 M.W.N. 929 Cr. 183 (no formal proof by prosecution as to voluntary nature necessary). Scope of the section, 1938 M.W.N. 24 Cr. 1. Injuries on accused between arrest and release on bail. Onus on prosecution to prove voluntary nature, 1935 M.W.N. 1093 Cr. 196. Where accused was questioned persistently for 6 hours, statement ruled out under this section, 1939 M.W.N. 1134 Cr. 174 also 1940 M.W.N. 1272 Cr. 186. Village Munsiff saying "No harm, tell" is not inducement, 1938 M.W.N. 467 Cr. 83. President of vigilance committee is a person in authority, 1939 M.W.N. 841 Cr. 49. Court can believe part of a confession which tells against accused and reject part which tells in his favour. Court need not accept circumstances alleged in extenuation, 1930 M.W.N. 785 Cr. 177; 1934 M.W.N. 18 Cr. 5 see also 1940 M.W.N. 169 Cr. 83. Village Munsiff saying to accused "I suspect you. Tell the truth" is not threat or inducement, 1935 M.W.N. 824 Cr. 151. A confessional statement on oath before Assistant Registrar Co-operative Societies is admissible under the section, 19,2 M.W.N. 466 Cr. 101. Sub-Inspector saying "you need not be afraid if you produce knife, etc., used by you" is inducement, 1941 M.W.N. 956 Cr. 144.

S. 25.—Confession need not be of the crime then being investigated, 1931 M.W.N. 1138 Cr. 234. Incriminating statement made by accused to police not admissible, 1936 M.W.N. 1241 Cr. 218. A statement to an Excise Inspector in answer to questions is not a confession under this section, 1932 M.W.N. 458 Cr. 69; 1934 M.W.N. 394 Cr. 67 also 1938 M.W.N. 95 Cr. 23. Statement of a confessional nature by a witness is not a confession under the section, 35 M. 247. A confessional statement, though admissible against the person implicated by it, 35 M. 397 (F.B.).

S. 26.—Joint confession of four accused is not admissible when it is not known which accused made confession, 1942 M.W.N. 377 Cr. 81. Custody includes even police surveillance 1 Rangoon. 609. There is no absolute rule that a retracted confession cannot be acted upon much more when the reasons given by the accused for such retraction are palpably false. I.L.R. 53 M. 160. Also I.L.R. 1944 M. 308; 1930 M.W.N. 785 Cr. 177. The word Magistrate is not confined to Magistrates under Crl. Procedure Code. 'A Judged' instruction of French India is a "magistrate" under this section. 52 M. 529.

[*Explanation.*—In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or in Burma or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.]

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

How much of information received from accused may be proved.

Confession made after removal of impression caused by inducement, threat or promise relevant.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

29 If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

1. This was added by S. 9 of the Indian Evidence Act (1872) Amendment Act 1891 (Act III of 1891).
2. Now Code of Criminal Procedure, 1898 (Act V of 1898).

S. 27.—Scope, 1937 M.W.N. 881; Cr. 195. 1940 M.W.N. 764; Cr. 88. Must be voluntary statement 1939 M.W.N. Cr. 199. The fact that statement was attested by witnesses who were present then does not make it inadmissible. 1948 M.W.N. 719. Cr. 177. If the complainant is discovered as a result of statement, it is admissible. 1948 M.W.N. 126 Cr. 14. Mode of proof of statement under this section. 1945 M.W.N. 103 Cr. 18. Not vitiated by violation of Jail Rules and Police Standing Orders in the interview. Even if police knew generally where M.Os. were hidden from P.Ws., yet if they derived information from accused as to exact location statements of accused are admissible. 1948 M.W.N. 11. Cr. 1. Statement by accused when he was arrested in another case leading to discovery is admissible. 1943 M.W.N. 577. Cr. 137. Confession with reference to an offence not under investigation is admissible in the trial of that offence. 1912 M.W.N. 760 Cr. 174. Statements while producing material objects were not admissible. 1941 M.W.N. 956. Cr. 144. Also 1940 M.W.N. 1288 Cr. 174. Statement before deponent came into police custody is not within the scope of the section nor a joint statement by more than one accused. 1941. M.W.N. 766 Cr. 94. Statement recorded after the discovery of the facts is not admissible 1935 M.W.N. 82. Cr. 18. The fact deposed to and the fact discovered must be relevant. i.e., fact discovered must be connected with the crime by evidence *aliunde* or the statement itself. 1937 M.W.N. 442 Cr. 74 I.L.R. 1937 M. 685, (F.B.) approving 50 M. 274. Mode of recording as it is given in the 1st person I.L.R. 1940 M. 254. Also 1937 M.W.N. 441, Cr. 73. Fact referred to in the section is not confined to actual physical object, and need not be self-probatory 68 M. 642 (F.B.) Section 162 of the Code of Criminal Procedure does not shut out statements under this section. See Act 15 of 41 following I.L.R. 1939 M. 947 and 1949 M.W.N. 877 Cr. 137. It is only the first statement of the accused that leads to the discovery that is admissible. The later statement which is merely a repetition is not admissible. I.L.R. 1940 M. 254 (Supra). The fact that the material object was later picked up by a prosecution witness but it was discovered directly in consequence of the statement of the accused, the statement is admissible. 1940 M.W.N. 169 Cr. 27. The statement by one accused not leading to the discovery but discovery due to co-accused's statement not admissible. 1940 M.W.N. 542 Cr. 82. If the Police were aware of what accused was going to say statement inadmissible 1938 M.W.N. 1118 Cr. 198.

- ¹[*Explanation*.—"Offence," as used in this section, includes the abetment of, or attempt to commit the offence.]

Illustrations.

(a) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C." The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—"A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

Admissions not
conclusive proof,
but may estop.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

32. Statements, written or verbal, or relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:—

Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

When it relates to cause of death:

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

S. 30.—To use a statement against co-accused, it must amount to a confession, 85 M. 247 (F.B.). It is not necessary to try the co-accused independently, 88 M. 802. A self-exculpatory statement of a co-accused is not a confession under the section, 1911 (2) M.W.N. 375 also 1910 M.W.N. 751; 1931 M.W.N. 601 Cr. 105. Confession of the co-accused must be confession of the offence with which the accused is charged, 51 M. 75; 1935 M.W.N. 463, Cr. 79; 1937 M.W.N. 1283 Cr. 249; 1945 M.W.N. 722, Cr. 182. May be used to decide whether the statement of an approver may be relied upon, I.L.R. 1944 M. 308 (F.B.). There should be substantive evidence before the confession of co-accused can be used to set at rest any doubt, 1942 M.W.N. 448 Cr. 119 also 1940 M.W.N. 767 Cr. 91; 1940 M.W.N. 1045 Cr. 141. 'Proved' means proved before prosecution case ends. So co-accused's confession in answer to questions under S. 342 Cr. P.C. from dock inadmissible, 54 M. 788 also 1939 M.W.N. 891 Cr. 66 but not so with regard to statement under S. 209 Cr. P. C. in the preliminary enquiry, 1939 M.W.N. 611 Cr. 95. Retracted confession of co-accused is of little value and fullest corroboration is necessary I.L.R. 1938 M. 349.

1. This was added by S. 4 of the Indian Evidence Act (1872) Amendment Act 1891. (Act III of 1891).

S. 32 (1)—Meaning—See 1939 M.W.N. 185 Cr. 17. (P.C.) Mode of Proof—See 22 M.L.J. 453, also 54 M. 678. Statement by wife of deceased who later commits suicide with regard to killing of deceased by accused not admissible, 1942 M.W.N. 201 Cr. 50. Statement may be made before the cause of death has arisen or before deceased anticipated being killed "Circumstances" must be of the transaction and must have proximate relation to the actual occurrence, 1939 M.W.N. 185 Cr. 17 (P.C.) (supra) Nods and signs may constitute statement under the section, 1937 M.W.N. 169 Cr. 25 (P.C.) A statement by a deceased person as to motive can be admitted under this section if the requirements of the section are satisfied, 54 M. 931; but not otherwise, 1938 M.W.N. 863 Cr. 152 also 1940 M.W.N. 937 Cr. 117. If Court is convinced of statement being true no corroboration is necessary, I.L.R. 1940 M. 158 (F.B.) Where corroboration was deemed necessary, see A.L.R. 1931 M. 180 and 1935 M.W.N. 1069 Cr. 193.

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him or the receipt of money, good securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

(4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest of the existence of which, if it existed he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen.

(5) When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons as to whose relationship [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

a) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

(b) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that on a given day he attended A's mother and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A saying that he had received the rent on A's account and hold it at A's orders, is a relevant fact.

(f) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(h) The question is, what was the cause of the wreck of a ship.

A protest made by the captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banva in the ordinary course of his business, is a relevant fact.

(k) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(l) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

33. Evidence given by a witness in a judicial proceeding, or before any

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable :

Provided—

that the proceeding was between the same parties or their representatives in interest ;

that the adverse party in the first proceeding had the right and opportunity to cross-examine ;

S. 33.—Mere statement by the Police Constable that witness has joined the army and cannot be served is not enough but evidence as to what steps were taken necessary. I.L.R. 1944. M. 287. The fact of incapability of giving evidence must be strictly proved 1946. M.W.N. Cr. 86 (P.C.) Depositions in a previous trial of a witness not examined in *de novo* trial do not come under this section 46 M. 117.

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

- 34.** Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Entries in books of account when relevant.

Illustration

A sues B for Rs. 1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

- 35.** An entry in any public or other official book, register or record, stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

Relevancy of entry in public record, made in performance of duty.

- 36.** Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Relevancy of statements in maps, charts and plans.

- 37.** When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any ¹[Act of the Central Legislature, or of any other legislative authority in British India constituted by any laws for the time being in force or in a Government notification or notification by the Crown Representative appearing in the official Gazette or in any printed paper purporting to be the London Gazette or Government Gazette of any Dominion, colony or possession of His Majesty is a relevant fact].

* * * * *

- 38.** When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

Relevancy of statements as to any law contained in law books.

S. 34.—An entry by an Elementary School teacher in the attendance register is not an entry under the section. 1936 M.W.N. 111 Cr. 28.

1. These words were substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. The sub-section has been omitted by section 3 and of 2nd Sch. of the Repealing and Amending Act 1914. (Act X of 1914.)

HOW MUCH OF A STATEMENT IS TO BE PROVED.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

What evidence is to be given when statement forms part of a conversation, document, book or series of letters or papers.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

Previous judgments relevant to bar a second suit or trial.

41 A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Relevance of certain judgments in probate, etc., jurisdiction.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, ¹[order or decree] came into operation ;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, ¹[order or decree] declares it to have accrued to that person ;

that any legal character which it takes away from any such person ceased at the time from which such judgment, ¹[order or decree] declared that it had ceased or should cease ;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, ¹[order or decree] declares that it had been or should be his property.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.

42 Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the inquiry ; but such judgments, orders or decrees, are not conclusive proof of that which they state.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right-of-way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right-of-way, is relevant, but it is not conclusive proof that the right-of-way exists.

S. 40 et. seq.—In a civil suit and a criminal prosecution in the same matter judgment of Civil Court is not admissible in evidence 55 M. 346.

1. These words were inserted by S. 3 of the Indian Evidence Act (Amendment) Act (18 of 1872).

Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Illustrations.

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

[(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.]

[(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sent to prison is relevant under section 8 as showing the motive for the fact in issue.]

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under sections 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

OPINIONS OF THIRD PERSONS WHEN RELEVANT.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting¹ [or finger impression], the opinion upon that point of persons specially skilled in such foreign law, science or art, ²[or in questions as to identity of handwriting or finger impressions] are relevant facts.

Such persons are called experts.

Illustrations.

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

1. These illustrations were added by S. 5. of the Indian Evidence Act (1872) Amendment Act 1891 (I of 1891.)

2. These words were added by Indian Evidence Act 1899. [V of 1899.]

S. 45. Experts in foot prints are not recognised I.L.R. 1938 M. 201; 1942 M.W.N. 399. Cr. 16 1940 M.W.N. 761 Cr. 85. The court is not bound to accept the evidence of experts without satisfying itself of reasons for the opinion 1941 M.W.N. 218 Cr. 15 Theoretical evidence as to time of death is not of value unless all possible circumstances are exhausted I.L.R. 1940 M. 254.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(a) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Opinion as to handwriting, when relevant.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when in the ordinary course of business, documents, purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C nor D ever saw A write.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed are relevant.

Opinion as to existence of right or custom, when relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinions as to usages, tenets, etc., when relevant.

49. When the Court has to form an opinion as to—
the usages and tenets of any body of men or family,
the constitution and government of any religious or charitable foundation, or
the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact :

Opinions on relationship, when relevant.

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act or in prosecutions under sections 494, 495, 497 or 498 of the Indian Penal Code.

Illustrations.

(a) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Grounds of opinion, when relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER, WHEN RELEVANT.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In civil cases, character to prove conduct imputed, irrelevant.

In criminal cases, previous good character relevant.

Previous bad character not relevant, except in reply.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

¹[**54.** In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.]

55. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Character as affecting damages.

Explanation.—In sections 52, 53, 54, and 55, the word “character” includes both reputation and disposition ; but ²[except as provided in section 54], evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

1. This section was substituted by S. 6 of the Indian Evidence Act (1872) Amendment Act, 1891 (8 of 1891).

2. These words and figures were inserted by S. 7 *ibid.*

PART II.—On Proof.

CHAPTER III.

FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice.

57. The Court shall take judicial notice of the following facts:—

(1) all laws or rules having the force of law now or heretofore in force or hereafter to be in force, in any part of British India :

(2) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed :

(3) Articles of War for Her Majesty's Army ¹[Navy or Air Force] :

(4) the course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act, or any other law for the time being relating thereto.

Explanation.—The word "Parliament" in clauses (2) and (4) includes—

(1) the Parliament of the United Kingdom of Great Britain and Ireland ;

(2) the Parliament of Great Britain ,

(3) the Parliament of England

(4) the Parliament of Scotland ; and

(5) the Parliament of Ireland :

(5) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland :

(6) all seals of which English Courts take judicial notice : the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the ²[Central Government or the Crown Representative] the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India :

(7) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in ²[any Official Gazette] :

(8) the existence, title and national flag of every State or Sovereign recognized by the British Crown :

(9) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette :

(10) the territories under the dominion of the British Crown :

(11) the commencement, continuance and termination of hostilities between the British Crown and any other State or body of persons :

1. These words were substituted for the words "or Navy" by S. 2 and the First Sch. of the Repealing and Amending Act, 1937 (10 of 1937).

2. These words were substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

(12) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it :

(13) the rule of the road ¹ [on land or at sea].

In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings: —

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.

OF ORAL EVIDENCE.

59. All facts, except the contents of documents, may be proved by oral evidence.

60. Oral evidence must, in all cases whatever, be direct; that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds :

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable :

Provided also, that if oral evidence refers to the existence of condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

1. These words were inserted by S. 5 of the Indian Evidence Act Amendment Act (18 of 1892).
S. 60.—1938 M. W. N. 1424 Cr. 228.

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

Proof of contents
of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

- (1) certified copies given under the provisions hereinafter contained¹;
- (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;
- (3) copies made from or compared with original;
- (4) counterparts of documents as against the parties who did not execute them;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases:—

1. See Section 76 *infra*.

- (a) when the original is shown or appears to be in the possession or power—
 of the person against whom the document is sought to be proved, or
 of any person out of reach of, or not subject to, the process of the Court, or
 of any person legally bound to produce it,
 and when, after the notice mentioned in section 66, such person does not produce it ;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest ;
- (c) when the original has been destroyed or lost or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time ;
- (d) when the original is of such a nature as not to be easily moveable ;
- (e) when the original is a public document within the meaning of section 74 ;
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence ;
- (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d) any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is [or to his attorney or pleader], such notice to produce it as is prescribed by law ; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case :

Rules as to notice to produce.

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :—

- (1) when the document to be proved is itself a notice ;

1. These words were inserted by S. 6 of the Indian Evidence Act (Amendment) Act, (18 of 1872).

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it ;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force ;

(4) when the adverse party or his agent has the original in Court ;

(5) when the adverse party or his agent has admitted the loss of the document ;

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court

Proof of signature and handwriting of person alleged to have signed or written document produced.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of execution of document required by law to be attested.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the Court and capable of giving evidence :

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied.]

Proof where no attesting witness found.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Admission of execution by party to attested document.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of document not required by law to be attested

72. An attested document not required by law to be attested may be proved as if it was unattested.

Comparison of signature, writing or seal with others admitted or proved.

73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

¹[This section applies also, with any necessary modifications, to finger-impressions].

PUBLIC DOCUMENTS.

Public documents.

74. The following documents are public documents:—

(1) documents forming the acts or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country;

(2) public records kept in British India of private documents.

Private documents.

75. All other documents are private.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificates shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Certified copies of public documents.

Explanation.—Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. The following public documents may be proved as follows:—

(1) Acts, orders or notifications of ²[the Central Government] in any of its departments, or ²[of the Crown Representative] or of any ²[Provincial Government] or any department of any ²[Provincial Government],—

by the records of the departments, certified by the heads of those departments respectively,

1. This paragraph was added by S. 3 of the Indian Evidence Act, 1899 (5 of 1899).

S. 74.—A circular by the Director-General of Posts and Telegraphs of an intention to issue a particular kind of stamp is not a public document as it is not an 'act' or record of an act 1929 M.W.N. Cr. 8. Finger print slip taken by police of convicts in jail is a document of the act of executive 1938 M.W.N. 595 Cr. 115.

S. 76.—Does not give right to the accused to inspect records in the custody of the Court because they are produced but not put in evidence in the Court in which a trial is held, 1944 M.W.N. 348 Cr. 100.

2. These words were substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

or by any document purporting to be printed by order of any such Government, [or, as the case may be, of the Crown Representative]¹

(2) The proceedings of the Legislatures,—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed ¹[by order of the Government concerned] :

(3) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,—

by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer :

(4) The Acts of the Executive or the proceedings of the Legislature of a foreign country,—

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some ¹[Central Act] :

(5) The proceedings of a municipal body in British India,—

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body :

(6) Public documents of any other class in a foreign country,—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

PRESUMPTIONS AS TO DOCUMENTS.

79. The Court shall presume every document purporting to be a certificate, certified copy or other document, which is by

Presumption as
to genuineness of
certified copies.

law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in British India, or by any officer in ¹[any Indian State],

who is duly authorized thereto by ¹[the Central Government or the Crown Representative], to be genuine.

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

80. Whenever any document is produced before any Court, purporting

Presumption as
to documents pro-
duced as record of
evidence.

to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any

prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine ; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true ; and that such evidence, statement or confession was duly taken.

1. These words were added etc., by Government of India (Adaptation of Indian Laws) Order, 1957.

81. The Court shall presume the genuineness of every document purporting to be the London Gazette, or ¹[any Official Gazette, or the Government Gazette] of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

82 When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England and Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature, is genuine and that the person signing it held at the time when he signed it, the judicial or official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. The Court shall presume that maps or plans purporting to be made by the authority of ¹[any Government in British India] were so made, and are accurate; (but maps or plans made for the purposes of any cause must be proved to be accurate.)

84 The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

85. The Court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty, or of ¹[the Central Government] was so executed and authenticated.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of ¹[the Central Government] ²[in or for] such country to be the manner commonly in use in that country for the certification of copies of judicial records.

³[An officer who, with respect to any territory or place not forming part of Her Majesty's dominions, is a political agent therefor, as defined in

1. These words were substituted by the Government of India (Adaptation of Indian Laws) Order, 1957.

2. These words were substituted for the words "resident in" by S. 8 of the Indian Evidence Act. (1873) Amendment Act. 1891 (3 of 1891).

3. This paragraph was added by S. 4 of the Indian Evidence Act, 1899 (5 of 1899).

section 8, clause (40), of the General Clauses Act, 1897, shall, for the purposes of this section, be deemed to be a representative of [the Central Government]¹ in and for the country comprising that territory or place.]

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to books, maps and charts.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to telegraphic messages.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption as to due execution, etc., of documents not produced.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the person by whom it purports to be executed and attested.

Presumption as to documents thirty years old.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgage is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract, or of a grant or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

¹ These words were substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills ¹[admitted to probate in British India] may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representative in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms.

Proviso (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, ²[want or failure] of consideration, or mistake in fact or law.

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

1. These words were substituted for the words "under the Indian Succession Act" by S. 7 of the Indian Evidence Act Amendment Act, 1872 (18 of 1872.)

2. These words were substituted for the words "want or failure" by S. 8 of the Indian Evidence Act Amendment Act, 1872 (19 of 1872.)

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved :

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(a) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March, 1873. The fact that at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(c) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs. 500." B may prove the verbal warranty.

(h) A hires lodging of B, and gives B a card on which is written—"Rooms, Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board.

A hires lodging of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(a) A agrees, in writing, to sell a horse to B for Rs. 1,000 or Rs. 1,500.

Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed, "my estate at Rampur containing 100 bighas." A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Evidence as to document unmeaning in reference to existing facts.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustrations.

A sells to B, by deed, "my house in Calcutta."

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language which can apply to one only of several persons.

Illustrations.

(a) A agrees to sell to B, for Rs. 1,000, "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Dekkhan or Haidarabad in Sind was meant.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration.

A agrees to sell B, "my land at X in the occupation of Y." A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters of foreign, obsolete, technical, local and provincial expressions, of abbreviations and words used in a peculiar sense.

Evidence as to meaning of illegible characters, etc.

Illustration.

A, a sculptor, agrees to sell to B, "all my mods." A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Who may give evidence of agreement varying terms of document.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Saving of provisions of Indian Succession Act relating to wills.

100. Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act¹ (X of 1865) as to the construction of wills.

1. See now the Indian Succession Act, 1925 (39 of 1925).

PART III.—Production and Effect of Evidence.

CHAPTER VII.

OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgments as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 Burden of proof.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustration.

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
 On whom burden of proof lies.

Illustrations.

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
 Burden of proof as to particular fact.

Illustration.

1 (a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.
 Burden of proving fact to be proved to make evidence admissible.

Illustrations.

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

S. 101.—See *Woolmington v. The Director of Public Prosecutions*, 1935 A.C. 482 (House of Lords) followed in *Mancini v. The Director of Public Prosecutions*, 1942 M.W.N. Cr. 140 (House of Lords) for onus of proof on the prosecution.

1. *Sic*, in the Act as published in Gazette of India 1879, Pt. IV, p. 1. There is no illustration (b).

105 When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Burden of proving that case of accused comes within exceptions.

Illustrations.

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c) Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

Burden of proving fact especially within knowledge.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

108 1[Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is 1[shifted to] the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand to each other in those relationships respectively, is on the person who affirms it.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Burden of proof as to ownership.

S. 105.—Illustration (a)—1910 M.W.N. 63 Cr. 137. 1936 M.W.N. 1248 Cr. 220 (P.C.) Where accused sets up a plea of self defence falling under exception 2 to section 300 I.P.C. burden of proof lies on him. 1940 M.W.N. 1236 Cr. 173 Section is imperative with regard to presumption or absence of circumstances. 1935 M.W.N. 360 Cr. 64.

1. These words were substituted for the words "when" and "on" respectively by S. 9 of the Indian Evidence Act Amendment Act (18 of 1872).

Proof of good faith in transactions where one party is in relation of active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried shall be conclusive proof that he is legitimate son of that man unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Birth during marriage conclusive proof of legitimacy.

113. A notification in the [Official Gazette] that any portion of British territory has [before the commencement of Part III of the Government of India Act, 1935] been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Proof of cession of territory.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Court may presume existence of certain facts.

Illustrations

The Court may presume—

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(c) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

S. 112.—Non-access by husband, if alleged, must be proved to rebut presumption under the section. 1932 M.W.N. 1217 Cr. 245 also 1936 M.W.N. 1180 Cr. 193. 1941 M.W.N. 1037 Cr. 161.

S. 114.—Where unexplained possession of stolen property that belong to the deceased is the only circumstance against the accused, he cannot be convicted of murder unless Court is satisfied that possession of property could not have passed without murder. 50 M. 274; though it is presumptive evidence A.I.R. 1921 M. 2679. Court is not entitled to draw an inference that accused committed murder or took part in the murder if he is found in possession of the property proved to have been in possession of the murdered at the time of murder or is able to point out the place where such property is hidden and admits having concealed it or fails to give an explanation which may reasonably be accepted. 56 M. 281. (F.B.). Also 1935 M.W.N. 954 Cr. 170. Also 1937 M.W.N. 695 Cr. 104. Where accused was seen in company of the deceased later sold trinkets of the deceased to a goldsmith traced on information given by accused the presumption arises. 1938 M.W.N. 34 Cr. 10.

ILL.—(a) Not exhaustive. Applies also to goods criminally misappropriated. 1945 M.W.N. 107 Cr. 23 but see 1913 M.W.N. 580 Cr. 140. Presumption cannot be invoked against accused deaf and dumb mute. 1945 M.W.N. 692 Cr. 181. No maximum period can be fixed. 1932 M.W.N. 861 Cr. 186; 5 days held to be soon after 1933 M.W.N. 825 Cr. 53 one month held not so. 1937 M.W.N. 551 Cr. 112. Possession must be an established fact for presumption. 1935 M.W.N. 1195 Cr. 211.

1. These words have been added by the Government of India (Adaptation of Indian Laws) Order, 1937.

- (e) that judicial and official acts have been regularly performed ;
- (f) that the common course of business has been followed in particular cases ;
- (g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;
- (h) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;
- (i) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it :—

as to *illustration (a)*—a shop-keeper has in his till a marked rupee soon after it was stolen. and cannot account for its possession specifically, but is continually receiving rupees in the course of his business ;

as to *illustration (b)*—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself :

as to *illustration (b)*—a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable :

as to *illustration (c)*—A the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence :

as to *illustration (d)*—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course :

as to *illustration (e)*—a judicial act, the regularity of which is in question, was performed under exceptional circumstances :

as to *illustration (f)*—the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances :

as to *illustration (g)*—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family

as to *illustration (h)*—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked,

as to *illustration (i)*—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.

ESTOPPEL.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Estoppel

Illustrations.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale or the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title of such immoveable property : and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppel of tenant ;

and of licensee of person in possession.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1).—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2).—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.

OF WITNESSES.

118.—All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not competent to testify unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Parties to civil suit, and their wives or husbands Husband or wife of person under criminal trial.

120. In all Civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

S. 118.—See Oaths Act S. 18 with regard to children to whom no oath has been administered, 1986 M.W.N. 97 Cr. 18 also no corroboration necessary of such evidence though it is sound rule of practice to look for corroboration, 1946 M.W.N. Cr. 25 (P.C.).

S. 120.—Though such examination of husband or wife must be avoided if possible, 1986 M.W.N. 479 Cr. 95.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the Officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

125. No Magistrate or police-officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenues.

Explanation.—“Revenue officer” in this section means any officer employed in or about the business of any branch of the public revenue.]

126. No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment;

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any [illegal] purpose;

(2) any fact observed by any barrister, pleader, attorney and vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, [pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client.

S. 123.—Does not apply to statements under S. 163 Cr. P. C., applied for by the accused. 1935 M.W.N. 1382 Cr. 226 also to statements recorded by a Forest Officer investigating a case. 1937 M.W.N. 322 Cr. 50.

S. 124.—The court cannot question the decision of the public officer in the matter. 1943 M.W.N. 62 Cr. 11 also A.I.R. 1940 M. 342. If there is a waiver in the lower court privilege cannot be claimed later A.I.R. 1923 M. 392. An accident register is not a privileged document. 1939 M.W.N. 1128, Cr. 168.

1. This section was substituted by the Indian Evidence Act (1873) Amendment Act, 1937 (8 of 1937).

2. This word was substituted by S. 10 of the Indian Evidence Act Amendment Act (18 of 1973).

3. This word was inserted *ibid*.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(a) A, a client, says to B, an attorney—"I have committed forgery and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

The communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

Section 126 to apply to interpreters, etc.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders attorneys and vakils.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126: and, if any party to a suit or proceedings calls any such barrister, ¹[pleader], attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

Privilege not waived by volunteering evidence.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Confidential communication with legal advisers.

130. No witness who is not a party to a suit shall be compelled to produce his title deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Production of documents which another person having possession could refuse to produce.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will

Witness not excused from answering on ground that answer will criminate.

1. This word was inserted by S. 10 of the Indian Evidence Act Amendment Act (18 of 1973).

expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind :

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a

prosecution for giving false evidence by such answer.

133. An accomplice shall be a competent witness against an accused person ; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Number of witnesses.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X.

OF THE EXAMINATION OF WITNESSES.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Order of production and examination of witnesses.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant ; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

Judge to decide as to admissibility of evidence.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

S. 133.—See section 114 illustration (b). Corroboration must be in material particulars regarding accused's implication. 1936 M.W.N. 889 Cr. 165 (P.C.) 1940 M.W.N. 940 Cr. 120, 1938 M.W.N. 316 Cr. 40. Also 1929 M.W.N. 698 Cr. 146. Not safe to convict on the sole testimony of approver without corroboration, 54 M. 981. Cannot be corroborated by evidence of another approver but only by independent and untainted evidence, 1933 M.W.N. 1129; Cr. 173. Unless the case is a very exceptional one, an accomplice's evidence is not sufficient. A co-accused's statement may be taken into consideration to decide whether it is safe to rely on approver's evidence. I.L.R. 1944 M. 808 (F.B.) It is now virtually a rule of law that corroboration is required in case of the evidence of an accomplice and it is an accepted rule that one accomplice cannot corroborate another. 1946 M.W.N. Cr. 9. No corroboration by his own accounts. 1935 M.W.N. 701 Cr. 182. Approver can be corroborated by confession of accused. 1937 M.W.N. 582 Cr. 122. In case of self exculpatory statement of an accomplice, the court must always look for corroboration. 1930 M.W.N. 169, Cr. 25.

S. 134.—It is not illegal to convict a man on the evidence of only one witness 51 M. 256 (F.B.)

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination. The examination of a witness by the adverse party shall be called his cross examination.

Re-examination. The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Order of examinations. **138** Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon the matter.

Direction of re-examination. **139.** A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character. **140.** Witnesses to character may be cross-examined and re-examined.

Leading questions. **141.** Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked. **143.** Leading questions may be asked in cross examination.

S. 138.—The evidence of a witness once examined cannot be deleted from the record and the accused are entitled to prove through him documents, 1941 M.W.N. 769 Cr. 101. It is not an axiom of law that every Court must reject examination-in-chief whenever cross examination does not confirm, 1937 M.W.N. Cr. 302.

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained, in a document, and if he says that it was, or if he is about to make any statement as to the contents or any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitled the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Questions lawful in cross-examination.

146. When a witness is cross-examined, he may in addition to the questions hereinbefore referred to be asked any questions which tend—

- (1) to test his veracity,
- (2) to discover who he is and what is his position in life, or
- (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following consideration:—

S. 145.—Letter written by a witness, but not a telegram which was not proved can be used under this section, 1945 M.W.N. 634 Cr. 129 (P.O.). A witness cannot be disbelieved without his attention being drawn to the inconsistent documents even if the documents be produced after his examination. 1929 M.W.N. 611 (P.O.). Followed in 47 M. 800; Mode of contradicting by means of a previous deposition. See 1929 M.W.N. 789 Cr. 165. Statement under S. 162 CrI. P.O. may be used for this purpose when a stage in trial has reached when the accused may use the statement to contradict a witness, 1929 M.W.N. 885 Cr. 189. Section does not apply to third party statements which cannot be used to contradict a witness, 1924 M.W.N. 270.

S. 148.—Plesder is entitled to ask question to shake the credit of a witness, without making an imputation under this section but if he is reckless, he comes within S. 150. 1930 M.W.N. 489 Cr. 81.

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence :

(4) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

149. No such question as is referred to in section 148 ought to be

asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Question not to be asked without reasonable grounds.

Illustrations.

(a) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(b) A pleader is informed by a person in Court that an important witness is a dakait; the informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(c) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

150. If the Court is of opinion that any such question was asked

Procedure of Court in case of question being asked without reasonable grounds.

without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

151. The Court may forbid any questions or inquiries which it regards

Indecent and scandalous questions.

as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

152. The Court shall forbid any question which

Questions intended to insult or annoy.

appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

153. When a witness has been asked and has answered any question

Exclusion of evidence to contradict answers to questions testing veracity.

which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(a) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d) A is asked whether his family has not had a blood-feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross examination by the adverse party.

Question by party to his own witness.

155. The credit of a witness may be impeached in the following ways
Impeaching by the adverse party, or, with the consent of the Court, by
credit of witness, the party who calls him :—

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit ;

(2) by proof that the witness has been bribed, or has ¹[accepted] the offer of a bribe, or has received any other corrupt inducement to give his evidence ;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

S. 154.—The prosecution cannot cross examine its own witnesses unless permission of court is obtained to treat him as hostile. 1936 M.W.N. 1193 Cr. 900. Witness cannot be treated as hostile by reason of his evidence being in conflict with other prosecution evidence 59 M. 904 as to when a witness can be turned hostile 1937 M.W.N. 587 Cr. 117. The evidence of a witness who has turned hostile need not be rejected *in toto* 56 M. 7.

1. This word was substituted for the word "had" by S. 11 of the Indian Evidence Act (Amendment) Act. (18 of 1872).

S. 155 —A statement by a witness signed before a Moneger cannot be used as substantive evidence under this section 1921 M.W.N. 872.

Illustrations.

(a) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

156 When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Questions tending to corroborate evidence of relevant fact, admissible.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate latter testimony as to same fact.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved.

158. Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matters suggested.

What matters may be proved in connection with proved statement relevant under section 32 or 33.

159. A witness may while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at the time fresh in his memory.

Refreshing memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

S. 157.—Where deposition in Magistrate's Court is read in Sessions Court, previous statement under S. 161 can be used to corroborate such deposition. I.L.R. 45 M. 766. "At or about the time" does not mean "at any time after the event" but means at once or shortly after when reasonable opportunity presents itself. I.L.R. 1945 M. 821. Statements in the F.I.R. can be used for purposes of corroboration or contradiction of a witness but are inadmissible for proving the facts alleged therein, 1930 M.W.N. 496, Cr. 120. Also 58 M. 590. A Deputy Superintendent of Police is an 'authority' under this Section. 1928 M.W.N. 860.

S. 159.—Panchayat namah prepared by police on recovery of articles is not substantive evidence but may be used to refresh memory 1939 M. W. N. 465 Cr. 61. Post mortem certificate is not substantive evidence and can be used by the doctor to refresh the memory 1939 M. W. N. 36 Cr. 12. First information report not substantive evidence 53 M. 590.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Testimony to facts stated in document mentioned in section 159.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it: such party may, if he pleases, cross-examine the witness thereupon.

Right of adverse party as to writing used to refresh memory.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or its admissibility. The validity of any such objection shall be decided on by the Court.

Production of documents.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

Translation of documents.

Giving as evidence, of document called for and produced on notice.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Using as evidence, of document production of which was refused on notice.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other-party or the order of the Court.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

S. 160.—Record of a dying declaration is admissible when witness does not recollect contents of it. 576. A police officer who took speech in shorthand may use his notes under this section 1949 M.W.N. 323 Cr. 34.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any object to any such question or order, nor without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved.

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

CHAPTER XI.

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

SCHEDULE

ENACTMENTS REPEALED

[Repealed by the Repealing Act, (Act I of 1938)]

S. 165.—Court should not be used for eliciting what law forbids being admitted such as statements under S. 163 Cr. P. Code, 1982 M.W.N. 625 Cr. 105.

THE Code of Criminal Procedure

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THE Code of Criminal Procedure

(ACT No. V OF 1898)¹

An Act to consolidate and amend the law relating to the Criminal Procedure.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure;

It is hereby enacted as follows:—

PART I—Preliminary.

CHAPTER I.

Short title and Commencement. 1. (1) This Act may be called the Code of Criminal Procedure, 1898; and it shall come into force on the first day of July, 1898.

Extent. (2) It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force, or shall apply to—

(a) the Commissioners of Police in the towns of Calcutta, Madras and Bombay, or the police in the towns of Calcutta and Bombay;

(b) heads of villages in the Presidency of Fort St. George; or

(c) village police-officers in the Presidency of Bombay;

Provided that the ²[Provincial Government] may, if it thinks fit, * * * by notification in the Official Gazette, extend any of the provisions of this Code, with any necessary modifications, to such excepted persons.

2. [Repeal of enactments, notifications, etc., under Repealed Acts. Pending Cases.] Repealed by the Repealing and Amending Act, 1914 (X of 1914).

Reference to Code of Criminal Procedure and other repealed enactments. 3. (1) In every enactment passed before this Code comes into force in which reference is made to, or to any chapter or section of the Code of Criminal Procedure, Act XXV of 1861 or Act X of 1872, or Act X of 1882, or to any other enactment hereby repealed, such reference shall, so far as may be

1. This Act has been declared to be in force in—Sonthal Parganas, Chittagong Hill Tracts, British Baluchistan, Panth Piploda, Khondmals District, Angul District, the Scheduled Districts in Ganjam and Vizagapatam in the Scheduled Districts of Hazaribagh, Lohardaga (now the Ranchi District) Manbhum and Palamau and in Pargana Dhalbhum and the Kolhan in the Singhbhum District, certain districts on the Sindh Frontier, and the Andaman and Nicobar Islands. It has ceased to be in force in the Garo Hills the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Sub-division of the Cachar District, the Mikir Hill Tracts in the Nowgong District, the Dibrugarh Frontier Tracts in the Lakshmipur District, and the Lushai Hills.

2. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. The words "with the sanction of the Governor-General in Council" were omitted by S. and Schedule I of the Devolution Act, 1920 (XXXVIII of 1920).

practicable, be taken to be made to this Code or to its corresponding chapter or section.

(2) In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having') the powers of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class" and "Magistrate of the third class," the expression "Magistrate of a division of a district" shall be deemed to mean "Sub-divisional Magistrate," the expression "Magistrate of the district" shall be deemed to mean "District Magistrate," the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate," and the expression "Joint Sessions Judge" shall mean "Additional Sessions Judge."

4. (1) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context :—

(a) "Advocate General" includes also a Government Advocate, or where there is no Advocate General or Government Advocate, such officer as the [Provincial Government] may, from time to time, appoint in this behalf :

(b) "bailable offence" means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force ; and "non-bailable offence" means any other offence :

(c) "charge" includes any head of charge when the charge contains more heads than one :

2* * * * *

(e) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown.

(f) "cognizable offence" means an offence for, and "cognizable case" means a case in, which a police-officer, within or without the presidency-towns, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant :

(g) "Commissioner of Police" includes a Deputy Commissioner of Police :

(h) "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer :

"European British subject." 3[(v) "European British subject" means—

1. These words were substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. Clause (d) was repealed by the Repealing and Amending Act, 1923 (XI of 1923).

3. This clause was substituted by S. 2 (f) of the Criminal Law Amendment Act, 1928 (XII of 1928).

S. 4.—(1) (h) Petition to Sub-Divisional Magistrate alleging suppression of the finding of treasure thro' by accused is a complaint, 1939 M.W.N. 318 (Cr. 42). A report of police officer in noncognisable cases is a complaint, 1933 M.W.N. 876; Cr. 138 also 49 M. 525 (F.B.).

(i) any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Islands or any Colony, or

(ii) any subject of His Majesty who is the child or grand-child of any such person by legitimate descent:]

(j) "High Court" means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras ¹ Bombay, ² [Allahabad ³ Patna] ⁴ [Lahore, ⁵ and Nagpur the Chief Court of Oudh and the Court of the Judicial Commissioner of Sind]: in other cases "High Court" means the highest Court of criminal appeal or revision for any local area; or, where no such Court is established under any law for the time being in force, such officer as the ⁶ [Provincial Government] may appoint in this behalf:

"Inquiry." (k) "inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court:

(l) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf:

"Judicial proceeding." (m) "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath:

(n) "non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police-officer, within or without a presidency-town may not arrest without warrant:

(o) "offence" means any act or omission made punishable by any law for the time being in force; it also includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871:

(p) "officer in charge of a police-station" includes, when the officer in charge of the police-station is absent from the station-house or unable from illness or other cause to perform his duties, the police-officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the ⁷ [Provincial Government] so directs, any other police-officer so present:

"Place." (q) "place" includes also a house, building, tent and vessel.

S. 4 —1. (j) 'Proceedings against European British subjects' means proceedings against persons who claim to be dealt with as European subjects, I.L.R. 1937 M. 889.

(1) (m) "Judicial proceeding" includes an enquiry before order under S. 144 is issued, I.L.R. 19 M. 18.

1. The word "and" was omitted by the Amending Act, 1916 (XIII of 1916).

2. These words were substituted, *ibid*.

3. The word "and" was omitted by the Repealing and Amending Act, 1919 (XVIII of 1919)

4. These words were substituted by the Central Provinces Courts (Supplementary) Act, 1935. (VIII of 1935).

5. The word "Rangoon" was omitted by the Government of India (Adaptation of Indian Laws) Order. 1937.

6. These words were substituted, *ibid*.

7. These words were substituted, *ibid*.

(r) "pleader," used with reference to any proceeding in any court, means a pleader ¹[or a mukhtar] authorized under any law for the time being in force to practise in such court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorized, and (2) any ²* * * other person appointed with the permission of the Court to act in such proceeding :

(s) "police-station" means any post or place declared, generally or specially, by the ³[Provincial Government] to be a police-station, and includes any local area specified by the ³ [Provincial Government] in this behalf :

(t) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction :

"Subdivision." (u) "sub-division" means a sub-division of a district :

"Summons case." (v) "summons case" means a case relating to an offence, and not being a warrant-case ; and

(w) "warrant-case" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months.

Words referring to acts. (2) Words which refer to acts done, extend also to illegal omissions ; and

Words to have same meaning as in Indian Penal Code. all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

5. (1) All offences under the Indian Penal Code, shall be investigated Trial of offences under Penal Code. inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same Trial of offences against other laws. provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiry into, trying or otherwise dealing with such offences.

PART II.—Constitution and Powers of Criminal Courts and Offices.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely :—

1. These words were inserted by S. 2 of XXXV of 1928.

2. The words "mukhtar or" were omitted by S. 2 of XXXV of 1928.

3. These words were substituted by the Government of India (Adaptation of Indian Laws Order), 1937.

- I.—Courts of Session :
- II.—Presidency Magistrates :
- III.—Magistrates of the first class :
- IV.—Magistrates of the second class :
- V.—Magistrates of the third class.

B.—Territorial Divisions.

7. (1) Every province (excluding the presidency-towns) shall be a sessions division, or shall consist of sessions divisions; and every sessions division shall, for the purposes of this Code, be a district or consist of districts.
- Sessions divisions and districts.
- (2) The ¹[Provincial Government] may alter the limits or 2 * * * the number of such divisions and districts.
- Power to alter divisions and districts.
- (3) The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively, unless and until they are so altered.
- Existing divisions and districts maintained till altered.
- (4) Every presidency-town shall, for the purposes of this Code, be deemed to be a district.
- Presidency-towns to be deemed districts.
8. (1) The ¹[Provincial Government] may divide any district outside the presidency-towns into sub-divisions, or make any portion of any such district a sub-division and may alter the limits of any division.
- Power to divide districts into Sub-divisions.
- (2) All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.
- Existing Sub-divisions maintained.

C.—Courts and Offices outside the Presidency-towns.

9. (1) The ¹[Provincial Government] shall establish a Court of Session for every sessions division, and appoint a judge of such Court.
- Court of Session.
- (2) The ¹[Provincial Government] may by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting; but, until such order is made, the Courts of Session shall hold their sittings as heretofore.
- (3) The ¹[Provincial Government] may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.
- (4) A Sessions Judge of one sessions division may be appointed by the ¹[Provincial Government] to be also an Additional Sessions Judge of

S. 7.—The word 'District' is a district for purposes of criminal administration and it does not mean a revenue district, 54 M. 948 (F.B.).

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1987.

2. The words "with the previous sanction of the Governor General in Council" were omitted by Act XXXVIII of 1920.

S. 9.—(1) The fresh appointment by name is necessary in case of a successor to an Assistant Sessions Judge, 1941 M.W.N. 62 Cr. 5.

another division, and in such case he may sit for the disposal of cases at such place or places in either division as the ¹[Provincial Government] may direct.

(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

10. (1) In every district outside the presidency-towns the ¹[Provincial Government] shall appoint a Magistrate of the first class, District Magistrate, who shall be called the District Magistrate.

(2) The ¹[Provincial Government] may appoint any Magistrate of the first class to be an Additional District Magistrate ²* * * and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this code ³ [or under any other law for the time being in force,] as the ¹[Provincial Government] may direct.

⁴[(3) For the purposes of sections 192, sub-section (1), 407, sub-section (2) and 528, sub-sections (2) and (3) such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate.]

11. Whenever in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the ¹[Provincial Government], exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

12. (1) The ¹[Provincial Government] may appoint as many persons as it thinks fit, besides the District Magistrate, to be Subordinate Magistrates of the first, second or third class in any district outside the presidency-towns; and the ¹[Provincial Government] or the District Magistrate, subject to the control of the ¹[Provincial Government], may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

13. (1) The ¹[Provincial Government] may place any Magistrate of the first or second class in charge of a sub-division, and relieve him of the charge as occasion requires.

(2) Such Magistrates shall be called Sub divisional Magistrates.

(3) The ¹[Provincial Government] may delegate its powers under this section to the District Magistrate.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 10.—(1) The magistrate so appointed need not be situated in the district and he may have head-quarters elsewhere, 1931 M.V.N. 1084 Cr. 228.

Sub-section (2) Additional District Magistrate appointed under this sub-section can try every case which the District Magistrate is empowered to try under any other enactment, I.L.R. 1937 M. 1034.

2. The words "for a period not exceeding six months" were omitted by S. 2 of Act XVIII of 1928.

3. These words were inserted, *ibid.*

4. This sub-section was added, *ibid.*

14. (1) The ¹[Provincial Government] may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally in any local area outside the presidency-towns.

(2) Such Magistrates shall be called Special Magistrates, and shall be appointed for such term as the ¹[Provincial Government] may by general or special order direct.

(3) * * * The ¹[Provincial Government] may delegate, with such limitations as it thinks fit, to any officer under its control the powers conferred by sub-section (1).

(4) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police-officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

15. (1) The ¹[Provincial Government] may direct any two or more Magistrates in any place outside the presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the ¹[Provincial Government] thinks fit.

(2) Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

See Criminal Rules of Practice. Rule 129.

16. The ¹[Provincial Government] may, or, subject to the control of the ¹[Provincial Government], the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects:—

- (a) the classes of cases to be tried;
- (b) the times and places of sitting;
- (c) the constitution of the Bench for conducting trials;
- (d) the mode of settling differences of opinion which may arise between the Magistrates in session.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. The words "With the previous sanction of the Governor General in Council" were omitted by Act XXXVIII of 1930.

3. 15.—(1) A Sub-Divisional Magistrate has no power under this section to direct the President of a Bench Court to constitute the Bench in any particular manner, 1937 M.W.N. 193 Cr. 33.

17. (1) All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches; and

Subordination of
Magistrates and
Benches to District
Magistrate.

and Benches; and

(2) Every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

to Subdivisional
Magistrate.

Subordination of
Assistant Sessions
Judges to Sessions
Judges.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge or, if there be no Additional or Assistant Judge, by the District Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.

See Criminal Rules of Practice. Rule 143.

(5) Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

D.—Courts of Presidency Magistrates.

18. (1) The ¹[Provincial Government] shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the presidency towns, and shall appoint one of such persons to be Chief Presidency Magistrate for each such town.

Appointment of
Presidency Magis-
trates.

(2) The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate, or by a salaried Presidency Magistrate, or by any other Presidency Magistrate empowered by the ¹[Provincial Government] to sit singly, or by any Bench of Presidency Magistrates.

²[(3) A Presidency Magistrate may be appointed under this section for such term as the ¹[Provincial Government] may, by general or special order, direct.]

²[(4) The ¹[Provincial Government] may appoint any person to be an Additional Chief Presidency Magistrate, and such Additional Chief Presidency Magistrate shall have all or any of the powers of a Chief Presidency Magistrate under this Code or under any other law for the time being in force, as the ¹[Provincial Government] may direct.]

19. Any two or more of such persons may (subject to the rules made by the Chief Presidency Magistrate under the power hereinafter conferred) sit together as a Bench.

Benches.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. Sub-sections (3) and (4) were added by S. 3 of the Code of Criminal Procedure (Amendment) Act, 1948 (XVIII of 1948).

S. 18.—(1) Under S. 7 of the Madras City Police Act the Commissioner of Police can exercise the powers of a Presidency Magistrate except those under chapters 18, 20 or 21 of the Code or by any other Government order, 1930 M.W.N. 107 Cr. 10.

20. Every Presidency Magistrate shall exercise jurisdiction in all places within the presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

21. (1) Every Chief Presidency Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Presidency Magistrate, and may, from time to time, with the previous sanction of the ¹[Provincial Government], make rules consistent with this Code to regulate—

- (a) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;
- (b) the times and places at which Benches of Magistrates shall sit;
- (c) the constitution of such Benches;
- (d) the mode of settling differences of opinion which may arise between Magistrates in session; and
- (e) any other matter which could be dealt with by a District Magistrate under his general powers of control over the Magistrates subordinate to him.

(2) The ¹[Provincial Government] may, for the purposes of this Code, declare what Presidency Magistrates ²[including Additional Chief Presidency Magistrates] are subordinate to the Chief Presidency Magistrate, and may define the extent of their subordination.

E.—Justices of the Peace.

22. Every ¹[Provincial Government], so far as regards the territories subject to its administration ⁴* * * may by notification in the official Gazette appoint such ⁵[persons resident within British India and not being the subjects of any foreign State] as it thinks fit to be Justices of the Peace within and for the local area mentioned in such notification.]

23. [*Justices of the Peace for the Presidency-towns.*] Repealed by s. 4 of Act XII of 1923.

24. [*Present Justices of the Peace.*] Repealed by S. 4 of Act XII of 1923.

25. In virtue of their respective offices, ⁶* * * * ⁷ [the Ex-officio Justices Judges of the High Courts] are Justices of the Peace within and for the whole of British India. Sessions Judges

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words were inserted by S. 4 of the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923).

3. This Section was substituted by S. 2 and Schedule I of the Devolution Act, 1920 (XXVIII of 1920).

4. The words were omitted by S. 8 of Act, XII of 1923.

5. These words were substituted for the words "European British subjects," *ibid.*

6. The words were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

7. These words substituted by the Lower Burma Courts Act, 1900 (VI of 1900).

and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the ¹[Provincial Government] under which they are serving, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

F.—Suspension and Removal.

26. and 27. [*Suspension and removal of Judges and Magistrates. Senpension and removal of Justices of the Peace.*] *Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.*

CHAPTER III.

POWERS OF COURTS.

A.—Description of Offences cognizable by each Court.

28. Subject to the provisions of this Code any offence under the Indian Penal Code may be tried—

- (a) by the High Court, or
- (b) by the Court of Session, or
- (c) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

Illustration.

A is committed to the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

29. (1) Subject to the ²[other provisions of the Code], any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned, it may be tried by the High Court or ³[subject as aforesaid] by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable.

4[29A]. No Magistrate of the second or third class shall inquire into or try any offence which is punishable otherwise than with fine not exceeding fifty rupees where the accused is an European British subject who claims to be tried as such].

Trial of European British subjects by second and third class Magistrates.

5[29B]. Any offence, other than one punishable with death or transportation for life, committed by any person who at the date when he appears or is brought before the Court is under the age of fifteen years, may be tried by a District Magistrate or a Chief Presidency Magistrate, or by any Magistrate

Jurisdiction in the case of juveniles.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words were substituted by S. 5 of the Criminal Law Amendment Act, 1923 (XII of 1923).

3. These words were inserted by S. 5 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

4. Section 29A was inserted by S. 6 of the Criminal Law Amendment Act, 1923 (XII of 1923).

5. Section 29B was inserted by S. 6 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

pecially empowered by the ¹[Provincial Government] to exercise the powers conferred by section 8, sub-section (1), of the Reformatory Schools Act, 1897, or, in any area in which the said Act has been wholly or in part repealed by any other law providing for the custody, trial or punishment of youthful offenders, by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby.]

30. In the territories respectively administered by the Lieutenant-Governors of the Punjab ²* * and the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam, in Sind, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners the ¹[Provincial Government] may, notwithstanding anything contained in section 29, invest the District Magistrate or any Magistrate of the first class, with power to try as a Magistrate all offences not punishable with death.

B.—Sentences which may be passed by Courts of various Classes.

Sentences which High Courts and Sessions Judges may pass. 31. (1) A High Court may pass any sentence authorized by law.

(2) A Sessions Judge or additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judge may pass any sentence authorised by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years.

Sentences which Magistrates may pass. 32. (1) The Courts of Magistrates may pass the following sentences, namely :—

- | | |
|---|---|
| (a) Courts of Presidency Magistrates and of Magistrates of the first class. | { Imprisonment for a term not exceeding two years, including such solitary confinement as is authorised by law ;
Fine not exceeding one thousand rupees ;
Whipping. |
| (b) Courts of Magistrates of the second class. | { Imprisonment for a term not exceeding six months including such solitary confinement as is authorized by law ;
Fine not exceeding two hundred rupees ;
3. |
| (c) Courts of Magistrates of the third class. | { Imprisonment for a term not exceeding one month ;
Fine not exceeding fifty rupees. |

(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

Power of Magistrates to sentence to imprisonment in default of fine. 33 (1) The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorised by law in case of such default :

Provide as to certain cases. Provided that—

S. 30.—This section does not override the provisions of S. 387, Sub-section (II-A), I.L.E. 1938 Lahore 628 (P.C.). If a restriction is based on such magistrate as to the maximum punishment of imprisonment he cannot try an offence whose minimum punishment is fixed by the Code, 1934 M.W.N. 1286 Cr. 338.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. The words "and Burma" were omitted, *ibid*.

3. The words in sub-section (1) and sub-section (3) of section 32 were repealed by the Whipping Act, 1909 (IV of 1909).

(a) the term is not in excess of the Magistrate's powers under this Code;

(b) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(g) The Imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

34. The Court of a Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or imprisonment for a term exceeding seven years.

Higher powers of certain District Magistrates.
Sentences which Courts and Magistrates may pass upon European British subjects.

1[34A. Notwithstanding anything contained in sections 31, 32 and 34—

(a) no Court of Session shall pass on any European British subject any sentence other than a sentence of death, penal servitude, or imprisonment with or without fine, or of fine, and

(b) no District Magistrate or other Magistrate of the first class shall pass on any European British subject any sentence other than imprisonment which may extend to two years, or fine which may extend to one thousand rupees, or both.]

35. (1) ²[When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code] sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments, when consisting of imprisonment or transportation to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Maximum term of punishment.

Provided as follows:—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years.

1. Section 34-A was inserted by S. 7 of the Criminal Law Amendment Act, 1923 (XII of 1923)
2. These words were substituted by Act XVIII of 1933.

S. 35.— This section is subject to the provisions of S. 71 I.P.C. which permits the punishment of offences made up of several offences, 57 M. 643. The imprisonment in default of payment of fine cannot be ordered to run concurrently with substantive sentence, I.L.R. 1937 M. 363; 1944 M.W.N. 294 Cr. 101. It is not illegal to order simple imprisonment to run concurrently, 1937 M.W.N. 1334 Cr. 278. Separate sentences under Ss. 147 and 341 I.P.C. illegal, 1941 M.W.N. 292 Cr. 25. Separate sentences for offences under Ss. 457 and 380 I.P.C. is legal, I.L.R. 1945 M. 696.

(b) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, ¹ [the aggregate of consecutive] sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

2 * * * *

C.—Ordinary and Additional powers.

36. All District Magistrates, Sub divisional Magistrates and Magistrates of the first, second and third classes, have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may by invested by the ³ [Provincial Government] or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the ³ [Provincial Government] or the District Magistrate.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the ³ [Provincial Government].

D.—Conferment, Continuance and Cancellation of powers.

39. (1) In conferring powers under this Code the ³ [Provincial Government] may by order, empower persons specially by name or in virtue of their office or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is ⁴ [appointed] to an equal or higher office of the same nature, within a like local area under the same ³ [Provincial Government], he shall, unless the ³ [Provincial Government] otherwise directs, or has otherwise directed

1. These words were substituted for the word "aggregate" by S. 7 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. The Explanation and Illustration to S. 35 were repealed, *ibid*.

3. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order 1937.

4. This word was substituted for the word "transferred" by S. 8 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

S. 36.—Though the power to order accused to be bound over under Section 106 Cr. P. C. is not expressly mentioned in this Section, yet a Bench Magistrate with first class powers can order such proceedings. 1932 M.W.N. 15, Cr. 31.

S. 40.—Where magistrate invested with powers going on "foreign service" and returning the powers originally granted continue. 1944 M.W.N. 57, Cr. 39.

1 * * * exercise the same powers in the local area ² [in which] he is so ³ [appointed].

41. (1) The ⁴ [Provincial Government] may withdraw all or any of the powers conferred under this Code or any person by it or by any officer subordinate to it.

Powers may be cancelled.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

PART III.—GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

Public when to assist Magistrate and police.

42. Every person is bound to assist a Magistrate or police officer reasonably demanding his aid, whether within or without the presidency-towns,—

(a) in the taking or preventing the escape of any other person, whom such Magistrate or police officer is authorized to arrest;

(b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

Aid to person, other than police officer, executing warrant.

43. When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

44. (1) Every person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit any offence punishable under any of the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or Police-officer of such commission or intention.

Public to give information of certain offences.

(2) For the purposes of this section the term "offence" includes any act committed at any place out of British India which would constitute an offence if committed in British India.

45. (1) Every village-headman, village-accountant, village-watchman, village-headmon, village police-officer, owner or occupier of land, and the accountants, land-holders and others bound to report certain matters. agent of any such owner or occupier ⁵ [in charge of the management of the land], and every officer employed in the collection of revenue or rent of land on the part of

1. The words "continue to" were omitted, by S. 8 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. These words were substituted for the words "to which", *ibid*.

3. This word was substituted for the word "transferred", *ibid*.

4. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

5. These words were inserted by S. 9 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928)

¹ [the Crown] or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is the nearer, any information which he may ²[possess] respecting—

- (a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent ;
- (b) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects to be a thug, robber, escaped convict or proclaimed offender ;
- (c) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under sections 143, 144, 145, 147, or 148 of the Indian Penal Code ;
- (d) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances ³[or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person ;]
- (e) the commission of, or intention to commit, at any place out of British India near such village any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code, namely, ⁴[231, 232, 233, 234, 235, 236, 237, 238,] 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 440, 450, 457, 458, 459, ⁵[460, 489A, 489B, 489C, and 489D] ;
- (f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the ⁶[Provincial Government], has directed him to communicate information.

(2) In this section—

- (i) "village" includes village-lands ; and
- (ii) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority established or continued by the ⁷[Central Government or the Crown Representative] in any part of India, in respect of any act which, if

1. These words were substituted for the word "Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. This word was substituted for the word "obtain" by S. 9 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928.)

3. These words were added, *ibid.*

4. These figures were inserted by S. 9 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

5. These figures, letters and word were substituted for the word and figures "and 460", *ibid.*

6. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

7. These words were substituted for the words "Governor General in Council", *ibid.*

committed in British India, would be punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.

Appointment of village headman by District Magistrate or Sub-divisional Magistrate in certain cases for purposes of this section.

(8) Subject to rules in this behalf to be made by the 1[Provincial Government], the District Magistrate 2[or Sub-divisional Magistrate] may from time to time appoint one or more persons 3[with his or their consent] 3[to perform the duties of village-headman under this section whether a village-headman has or has not been appointed for that village under any other law.]

CHAPTER V.

OF ARREST, ESCAPE AND RETAKING.

A.—Arrest generally.

46. (1) In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Arrest how made.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

Resisting endeavour to arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with transportation for life.

47. If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Search of place entered by person sought to be arrested.

48. If ingress to such place cannot be obtained under section 47 it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer to enter such place, and search therein and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification

Procedure where ingress not obtainable.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words were inserted by S. 9 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

3. These words were substituted for the words "to be village-headmen for the purposes of this section in any village for which there is no such headman appointed under any other law", *ibid.*

S. 46.—A mere showing of the warrant and asking a person to sign and follow is not arrest if the process-server did not touch the person. 1933 M.W.N. 856 Cr. 181.

§§. 49-54] WHEN POLICE MAY ARREST WITHOUT WARRANT 187

of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom does not appear in public such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Power to break open doors and windows for purpose of liberation.

49 Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

No unnecessary restraint.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

51. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him.

Mode of searching women.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

Power to seize offensive weapons.

B.—Arrest without Warrant.

When police may arrest without warrant.

54. Any police-officer may without an order from a Magistrate and without a warrant, arrest—

first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

S. 51.—Disposal of property seized by the Police under this section cannot be indefinitely postponed. 1941 M.W.N. 1089 Cr. 163.

thirdly, any person who has been proclaimed as an offender either under this Code or by order of the ¹ [Provincial Government] ;

fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property ² [and] who may reasonably be suspected of having committed an offence with reference to such thing ;

fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ;

sixthly, any person reasonably suspected of being a deserter from Her Majesty's ³ [Army, Navy or Air Force] ⁴ * * *

seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of British India, which, if committed in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India ; ⁵ * * * * *

eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3) ;

⁶ [*ninthly*, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.]

(2) This section applies also to the police in the town* ³ of Calcutta : * * *.

Arrest of vagabonds, habitual robbers, etc.

S. 55. (1) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested—

(a) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which

1. These words were substituted for the words " Local Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. This word was substituted for the word " or " by S. 10 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

3. These words were substituted for the words " Army or Navy " by S. 2 and Schedule 1 of the Repealing and Amending Act, 1927 (X of 1927).

4. The words " or of belonging to Her Majesty's Indian Marine Service and being illegally absent from that service " were omitted by S. 2 and Schedule of the Amending Act, 1934 (XXXV of 1934).

5. The word " and " was repealed by S. 3 and Schedule II of the Repealing and Amending Act, 1927 (X of 1927).

6. This clause was added by S. 10 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

7. The letter " s " and the words " and Bombay " were repealed by S. 2 (1) and Schedule A of the City of Bombay Police Act, 1901 (Bom. Act IV of 1901).

8. In the North-West Frontier Province, and police-officer may exercise the powers conferred by this section on a police officer in charge of a police-station. see the North-West Frontier Province Law and Justice Regulation 1901 (VII of 1901), S. 12.

afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

(b) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(c) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

(2) This section applies also to the police in the town * 2 of Calcutta * * *

56. (1) When any officer in charge of a police-station ¹[or any police-officer making an investigation under Chapter XIV] requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made. ¹[The officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.]

Procedure when police-officer deputes subordinates to arrest without warrant.

(2) This section applies also to the police in the town*² of Calcutta * 2

57. (1) When any person who in the presence of a police officer has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

Refusal to give name and residence

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required:

Provided that, if such person is not resident in British India, the bond shall be secured by a surety or sureties resident in British India.

(3) Should the true name and residence of such person not be ascertained within twenty four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

58. A police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under the Chapter, pursue such person into any place in British India.

Pursuit of offenders into other jurisdictions.

S. 56.—This has no application to the arrest of a deserter from the Army governed by Section 138 (1) of the Army Act. Section 54 empowers Head constable to arrest on suspicion of desertion. 1943 M. 827. Sub-section (1) does not control section 54 (1), 1943 M.W.N. 733. Cr. 163.

1. These words were inserted by S. 11 of the Code of Criminal Procedure (Amendment) Act 1928 (XVIII of 1928).

2. The letter "s" and the words "and Bombay" were repealed by S. 2 (1) and Sch. A of the City of Bombay Police Act, 1903 (Bom. Act IV of 1903).

59. 1[(1) Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and without unnecessary delay, shall make over any person so arrested to a police-officer, or in the absence of a police-officer, take such person or cause him to be taken in custody to the nearest police-station.]

Arrest by private persons and procedure on such arrest.

(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall rearrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

Person arrested to be taken before Magistrate or officer in charge of police-station.

60. A police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

61. No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from place of arrest to the Magistrate's Court.

Person arrested not to be detained more than twenty-four hours.

62. Officers in charge of police-stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Police to report apprehensions.

Discharge of person apprehended.

63. No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail commit the offender to custody.

Offence committed in Magistrate's presence

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Arrest by or in presence of Magistrate.

Power, on escape, to pursue and retake.

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

Provisions of sections 47, 48 and 49 to apply to arrests under section 66.

67. The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest.

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A.—*Summons.*

68. (1) Every summons issued by a Court under this Code shall be in writing in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule, direct.

(2) Such summons shall be served by a police-officer, or subject to such rules as the ¹[Provincial Government] may prescribe in this behalf, by an officer of the Court issuing it or other public servant.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

69. (1) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(2) Every person on whom a summons is so served shall if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(3) Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered post letter addressed to the chief officer of the corporation in British India. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

71. If service in the manner mentioned in sections 69 and 70 cannot be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

72. (1) Where the person summoned is in the active service of the ²[Crown] or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. This word was substituted for the word "Government" *ibid.*

shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

74. (1) When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

B.—Warrant of Arrest.

75 (1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

76. (1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state—

- (a) the number of sureties;
- (b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound; and
- (c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the Court.

77. (1) A warrant of arrest shall ordinarily be directed to one or more police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one it may be executed by all, or by any one or more, of them.

78. (1) A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

(2) Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, his land or farm; or the land under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

79. A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

80. The police-officer or other persons executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

81. The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

82. A warrant of arrest may be executed at any place in British India.

83. (1) When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or District Superintendent of Police or the Commissioner of Police in a presidency-town within the local limits of whose jurisdiction it is to be executed.

(2) The Magistrate or District Superintendent or Commissioner to whom such warrant is so forwarded shall endorse his name thereon and, if practicable, cause it to be executed in manner hereinbefore provided within the local limits of his jurisdiction.

84. (1) When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

1. Sub-section (2) of this section, so far as it applies to the police in the town of Bombay, has been repealed by S. 2 (1) and Sch. A of the City of Bombay Police Act, 1902 (Bom. Act IV of 1902).

(2) Such Magistrate or police-officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed, will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

(4) This section applies also to the police in the town*¹ of Calcutta
* * *

§ 85. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of Police, or the Commissioner of Police in a presidency-town within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner or District Superintendent.

Procedure on
arrest of person
against whom war-
rant issued.

Procedure by Magis-
trate before whom
person arrested is
brought.

§ 86. (1) Such Magistrate or District Superintendent or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court :

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

(2) Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

C.—Proclamation and Attachment.

87. (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

Proclamation for
person absconding.

(2) The proclamation shall be published as follows :—

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides ;

1. The letter "s" and the words "and Bombay" were repealed, *ibid*.

2. Sections 85 and 86, so far as they apply to the police in the town of Bombay, have been repealed by S. 2 (1) and Sch. A of the City of Bombay Police Act, 1932 (Bom. Act IV of 1932).

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

88 (1) The Court issuing a proclamation under section 87 may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other moveable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to ¹[the Provincial Government], be made through the Collector of the district in which the land is situate, and in all other cases—

(e) by taking possession; or

(f) by the appointment of a receiver; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(h) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of livestock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure. ²

³ [(6A) If any claim is preferred to, or objection made to the attachment of, any property attached under this section within six months from

1. These words were substituted for the word "Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. See now the Code of Civil Procedure, 1908 (Act of 1908).

3. Sub-sections (6A) to (6E) were inserted by S. 18 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

the date of such attachment, by any person other than the proclaimed person on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.]

² [(6B) Claims or objections under sub-section (6A) may be preferred or made in the Court by which the order of attachment is issued or, if the claim or objection is in respect of property attached under an order endorsed by a District Magistrate or Chief Presidency Magistrate in accordance with the provisions of sub-section (2), in the Court of such Magistrate.]

² [(6C) Every such claim or objection shall be inquired into by the Court in which it is preferred or made:

Provided that, if it is preferred or made in the Court of a District Magistrate or Chief Presidency Magistrate, such Magistrate may make it over for disposal to any Magistrate of the first or second class or to any Presidency Magistrate, as the case may be, subordinate to him.]

² [(6D) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6A) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.]

² [(6E) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.]

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of ¹ [the Provincial Government]; but it shall not be sold until the expiration of six months from the date of the attachment ² [and until any claim preferred or objection made under sub-section (6A) has been disposed of under that sub-section], unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of ¹ [the Restoration of Provincial Government], under sub-section (7) of section attached property. 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or, if part only thereof has been sold, the nett proceeds of the sale and the residue of

1. These words were substituted for the word "Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words were inserted by S. 13 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

the property, shall, after satisfying thereout all costs incurred in consequence of the attachment be delivered to him.

D.—Other Rules regarding Processes.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant for his arrest—

(a) if either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reasons to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court.

92. When any person who is bound by any bond taken under this Code to appear before a Court, does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

93. The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

E.—Special Rules regarding processes issued for service or execution outside British India and processes received from outside British India for service or execution within British India.

93A. (1) Where a Court in British India desires that a summons issued by it to an accused person shall be served at any place outside British India within the local limits of the jurisdiction of a Court established or continued by the authority of the Central Government or the Crown Representative in any part of India, it shall send such summons, in duplicate, by post or otherwise, to the presiding officer of that Court to be served.

(2) The provisions of section 74 shall apply in the case of a summons sent for service under this section as if the presiding officer of the Court to whom it was sent were a Magistrate in British India.

93B Notwithstanding anything contained in section 82, where a Court in British India desires that a warrant issued by it for the arrest of an accused person shall be executed at any place outside British India within the local limits of the jurisdiction of a Court established or continued by the authority of the Central Government or the Crown Representative in any part of India,

it may send such warrant, by post or otherwise, to the presiding officer of that Court to be executed.

93C. (1) Where a Court has received for service or execution a summons to, or a warrant for the arrest of, an accused person issued by a Court established or continued by the authority of the Central Government or the Crown Representative in any part of India outside British India, it shall cause the same to be served or executed as if it were a summons or warrant received by it from a Court in British India for service or execution within the local limits of its jurisdiction.

(2) Where any warrant of arrest has been so executed the person arrested shall so far as possible be dealt with in accordance with the procedure prescribed by sections 85 and 80.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

94 (1) Whenever any Court, or in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

95. (1) If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document, parcel or thing to such person as such Magistrate or Court directs.

1. These sub-sections were added by S. 3 of the Code of Criminal Procedure Amendment Act (Act 14 of 1911).

S. 94.— This section applies to statements recorded to by Inspector of Excise during enquiry through accused not entitled to copies under section 161 of the Code. 1913 M.W.N. 1170 Cr. 202.

Sub-section, (3) does not exempt documents presented under section 126 I.E.A. as such production is incumbent under section 161 Cr. P.C., notwithstanding any objection. 1939 M.W.N. 1127 Cr. 167. Production of an accident register is within this section. 1989 M.W.N. 1128 Cr. 168.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

B.—Search-warrants.

96. (1) Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, sub-section (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition,

or where such document or thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection.

it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorize any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

98. (1) If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

[or, if a District Magistrate, Sub-divisional Magistrate or a Presidency Magistrate, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit, sale, manufacture or production of any obscene object such as is referred to in section 292 of the Indian Penal Code or that any such obscene objects are kept or deposited in any place;]

1. This paragraph was inserted by S. 3 of the Obscene Publications Act, 1926 (VIII of 1926).

he may by his warrant authorize any police-officer above the rank of a constable—

- (a) to enter, with such assistance as may be required, such place, and
- (b) to search the same in manner specified in the warrant, and
- (c) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials ¹[or of any such obscene objects] as aforesaid, and
- (d) to convey such property, documents, seals, stamps, coins instruments or materials ¹[or such obscene objects] before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and
- (e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping or any such property, documents, seals stamps, coins, instruments or materials ¹[or such obscene objects] knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging ²[or the said obscene objects to have been or to be intended to be sold, let to hire, distributed, publicly exhibited, circulated, imported or exported.]

(2) The provisions of this section with respect to—

- (a) counterfeit coin,
- (b) coin suspected to be counterfeit, and
- (c) instruments or materials for counterfeiting coin,

shall, so far as they can be made applicable, apply respectively to—

- (a) pieces of metal made in contravention of the Metal Tokens Act, 1880, or brought into British India in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878.
- (b) pieces of metal suspected to have been so made or to have been so brought into British India or to be intended to be issued in contravention of the former of those Acts, and
- (c) instruments or materials for making pieces of metal in contravention of that Act.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained shall be immediately taken before the Court issuing the warrant, unless such place is

Disposal of things found in search beyond jurisdiction.

1. These words were inserted by S. 3 of the Obscene Publications Act, 1959 (VIII of 1959).

nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

1[99A. (1) Where—

(a) any newspaper, or book as defined in the Press and Registration of Books Act, 1867, or

(b) any document,

wherever printed, appears to the ²[Provincial Government] to contain any seditious matter ³[or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of His Majesty's subjects] ⁴[or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class], that is to say, any matter the publication of which is punishable under section 124A ⁵[or section 153A] ⁶[or section 295A] of the Indian Penal Code, the ¹[Provincial Government] may, by notification in the ⁷ [official Gazette], stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to His Majesty, and thereupon any police-officer may seize the same wherever found in British India and any Magistrate may by warrant authorize any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In sub-section (1) "document" includes also any painting, drawing or photograph, or other visible representation.]

8[99B: Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99A, may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which

Application to High Court to set aside order of forfeiture.

1. Sections 99A to 99G were inserted by S. 5 and Schedule III of the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

2. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. These words were inserted by S. 2 of the Code of Criminal Procedure (Third Amendment) Act, 1926 (XXXVI of 1926).

4. These words were inserted by S. 8 of the Criminal Law Amendment Act, 1927 (XXV of 1927).

5. These words, figures and letter were inserted by S. 2 of the Code of Criminal Procedure (Third Amendment) Act, 1926 (XXXVI of 1926).

6. These words figures and letter were inserted by S. 3 of the Criminal Law Amendment Act, 1927 (XXV of 1927).

7. These words were substituted for the words "local official Gazette" by the Government of India (Adaptation of Indian Laws) Order, 1937.

8. This section was inserted by S. 5 and Schedule III of the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

the order was made, did not contain any ¹[seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A.]

Hearing by special Bench.

²[99C. Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges.]

Order of Special Bench setting aside forfeiture.

³[99D. (1) On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained ³[seditious or other matter of such a nature as is] referred to in sub-section (1) of section 99A, set aside the order of forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.]

Evidence to prove nature or tendency of newspapers.

⁴[99E. On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, ⁴[in respect of which the order of forfeiture was made].

⁵[99F. Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed, the practice of such Courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.]

Jurisdiction barred.

²[99G. No order passed or action taken under section 99A shall be called in question in any Court otherwise than in accordance with the provisions of section 99B.]

C.—Discovery of Persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

Search for persons wrongfully confined.

D.—General Provisions relating to Searches.

101. The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98, ⁵[section 99A] or section 100.

Direction, etc. of search warrants.

1. These words were substituted for the words "seditious matter" by S. 8 of the Code of Criminal Procedure (Third Amendment) Act, 1926 (XXXVI of 1926).

2. Section 99C to 99G were inserted by S. 5 and Schedule III of the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

3. These words were substituted for the words "seditious matter of the nature" by S. 4 of the Code of Criminal Procedure (Third Amendment) Act, 1926. (XXXVI of 1926).

4. These words were substituted for the words "which are alleged to be seditious matter", *ibid*.

5. This word, figures and letter were inserted by S. 5 and Schedule III of the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

102. (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of section 52 shall be observed.

103. (1) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search ¹[and may issue an order in writing to them or any of them so to do.]

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(3) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

(4) When any person is searched under section 102, sub-section (3) a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

²[(5) Any person who without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code.]

E.—Miscellaneous.

104. Any Court may, if it thinks fit, impound any document, etc., or thing produced before it under this Code.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant

S. 102.—Section relates to formal searches under warrant issued under sections 96 and 98, 1945 M.W.N. 556 Cr. 104. Absence of witnesses does not affect admissibility but only acceptance 1945 M.W.N. 778 Cr. 140.

1. These words were added by S. 14 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. This sub-section was added by S. 14 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

PART IV.—PREVENTION OF OFFENCES.

CHAPTER VIII.¹

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

106. (1) Whenever any person accused of ²[any offence punishable under Chapter VIII of the Indian Penal Code, other than an offence punishable under section 143, section 149, section 153A or section 154 thereof, or of] assault or other offence involving a breach of the peace, or of abetting the same, ³* * *, or any person accused of committing criminal intimidation, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class.

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) An order under this section may also be made by an Appellate Court ⁴[including a Court hearing appeals under section 407] or by the High Court when exercising its powers of revision.

See Criminal Rules of Practice. Rule 255.

1. Ss. 20 to 26 of the Sind Frontier Regulation, 1891 (III of 1892) are to be read with and construed as part of this Chapter—see S. 27 of that Regulation, and S. 3, *supra*.

2. These words and figures were substituted for the words "rioting" by S. 15 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

3. The words "or of assembling armed men or taking other unlawful measures with the evident intention of committing the same," were omitted by S. 15 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

4. These words were inserted, *ibid*.

S. 106.—This section is applicable to offences under Sections 147, 324, 325, and 342 read with 149 though separate sentences may not be legal. 1939 M.W.N. 609 Cr. 93. This section can be applied when the conviction is one under section 329 as hurt involves breach of the peace. 1939 M.W.N. 248 Cr. 48, even if no specific finding as to the breach of the peace. 1934 M.W.N. 562 Cr. 98. An order under this section cannot be passed on conviction under section 426 I.P.C. 1939 M.W.N. 1012 Cr. 160; also when the conviction is under section 504 I.P.C. it cannot be said to be an offence involving a breach of peace. 1935 M.W.N. 818 Cr. 150, also for an offence under section 510 I.P.C. 1940 M.W.N. 531 Cr. 71. Section should be very sparingly invoked where offence committed is a petty one under section 8 (12) of the Town Nuisance Act; also one under section 75 of the Madras City Police Act. 1911 M.W.N. 221 Cr. 17. No evidence as to the past record of person to be bound over should be taken. 1936 M.W.N. 287 Cr. 45. Accused bound over under section 106 for one year in default to undergo simple imprisonment for 3 months. The default imprisonment should be for one year or less if security is furnished. 1933 M.W.N. 548 Cr. 96. "other offence" means offences *ejusdem generis* with the offences against public tranquillity and of assault mentioned in the section 47 M 846. "Involving breach of the peace" means that a breach of the peace is a necessary ingredient of the offence 29 M. 190. See. 26. M. 469. See Cr. R. P. Rule 255. No reasons for an order under this section need be given 1942 M.W.N. 304 Cr. 72. When an order should be passed. 1943 M.W.N. 760 Cr. 179. Section permits passing of an order at the time of passing sentence. Not necessary to call upon accused to show cause why he should not be bound over. 1943 M.W.N. 179 Cr. 31.

B.—Security for keeping the Peace in other Cases and security for Good Behaviour.

107. (1) Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate ¹[if in his opinion there is sufficient ground for proceeding] may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

(2) Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction.

(3) When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

(4) A Magistrate before whom a person is sent under ²[sub-section (3)] may in his discretion detain such person in custody ³[pending further action by himself under this Chapter].

S. 107.—Evidence of specific offences pending trial can be agitated in security proceedings as well as in the other proceedings. 1943 M.W.N. 149 Cr. 25. For proceedings under this section information regarding the past acts alone could not be enough to justify an order. 2 Weir 49, 1937 M.W.N. 48 Cr. 9, also 1938 M.W.N. 212. Cr. 38. To determine a jurisdiction of the magistrate for proceedings under this section it is enough if the person was within his limits at the time of taking action. 1934 M.W.N. 404 Cr. 76. It may be a basis of enquiry should not have been the subject matter of previous separate criminal proceedings. 41. M. 245 followed in 1938 M.W.N. 915 Cr. 160. No retrial can be ordered in appeal from an order under this section as an order does not fall within the scope of the section 403 (1) (b) of this Code. 1933 M.W.N. 241 Cr. 38. An application under this section is a complaint within the definition under section 4 (1) (b) of this Code. No further enquiry can be ordered under section 439 of the Code. 53 A. 149 Under this section accused not entitled to a copy of the information given by the police as the same is within the scope of section 548. 54 M. 422. Requirements of this section are three: (1) information, (2) sufficient ground and notice and (3) notice under section 112. 1939 M.W.N. 1201. Cr. 177 I.L.R. 1940 M. 835 (F.R.) an order mentioning an alternative punishment and that too for a fixed period is illegal. 51 M. 179. Magistrates have powers to proceed under this section in preference to section 145 1948 M.W.N. 960 Cr. 148.

1. These words were inserted by S. 10, *ibid*.

2. This word, figure and brackets were substituted for the words "this section" by S. 16 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

3. These words were substituted for the words "until the completion of the inquiry hereinafter prescribed", *ibid*.

108. Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Magistrate of the first class specially empowered by the ¹[Provincial Government] in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing ²[or in any other manner intentionally] disseminates or attempts to disseminate, or in anywise abets the dissemination of,—

Security for good behaviour from persons disseminating seditious matter.

- (a) any seditious matter, that is to say, any matter the publication of which is punishable under section 124-A of the Indian Penal Code, or
- (b) any matter the publication of which is punishable under section 153-A of the Indian Penal Code, or
- (c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,

such Magistrate ³[if in his opinion there is sufficient ground for proceeding] may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under ⁴[and edited, printed and published] in conformity with, the rules laid down in the Press and Registration of Books Act, 1867, ⁵[with reference to any matters contained in such publication] except by the order or under the authority of * * * the ⁶[Provincial Government] or some officer empowered ⁷[by the Provincial Government] in this behalf.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

- (a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or
- (b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words were inserted by S. 17 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

3. These words were inserted by S. 17 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

4. These words were substituted for the words "or printed or published", *ibid.*

5. The words "the Governor-General in Council or" were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

6. These words were substituted for the words "Local Government", *ibid.*

7. These words were substituted for the words "by the Governor General in Council", *ibid.*

S. 109.—Section cannot be applied without specific proof that person is taking precautions to conceal his presence. Mere attempt to commit offence is not sufficient. 1895 M.W.N. 1848 Cr. 252. Mere fact that he is taking precautions to conceal himself or associated with suspects not convicted of any offence is not sufficient ground. 1932 M.W.N. 1347 Cr. 271.

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

110. Whenever a Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate or a Magistrate of the first class Security for good behaviour from specially empowered in this behalf by the [Provincial Government] receives information that any person within the local limits of his jurisdiction—

- (a) is by habit a robber, house-breaker, ^{2*} thief, ³[or forger], or
- (b) is by habit a receiver of stolen property knowing the same to have been stolen, or
- (c) habitually protects or harbours thieves or aids, in the concealment or disposal of stolen property, or
- ⁴[(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code, or under section 489A, section 489B, section 489C or section 489D of that Code, or]
- (e) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or
- (f) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

111. [*Proviso as to European vagrants.*] Repealed by S. 8 of Act XII of 1923.

5.6112. When a Magistrate acting under section 107, section 108, Order to be made. section 109, or section 110 deems it necessary to require any person to show cause under such section, he shall make an

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. The word "or" was omitted by S. 18 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

3. These words were inserted, *ibid.*

4. This clause was substituted for the original clause (d) *ibid.*

5. Ss. 112, 113, 115 and 117 do not apply to an inquiry under S. 22 of the Sindh Frontier Regulation, 1892 (III of 1892), or under S. 42 of the Frontier Crimes Regulation, 1901 (III of 1901).

6. Ss. 112 to 121 and 123 to 126 and S. 514 apply to all cases requiring security for good behaviour under S. 6 of the Punjab Frontier Crossing Regulation, 1873 (VII of 1873).

S. 110.—It is not incumbent on a magistrate to start proceedings under this section on receipt of information or pass a formal order on such a petition not sent through post. 1934 M.W.N. 695 Cr. 125. Not necessary that previous convictions be proved. Other proof that he is a habitual offender is enough. 1938 M.W.N. 93 Cr. 21. It is necessary under Sub Sec. (e) to prove that offences of which a breach of peace is a constituent was committed. An assault is such an offence. An attempt to rape involves an assault. 1938 M.W.N. 601 Cr. 121. Sub Secs. (e) & (f) apply to leaders of faction arming themselves to settle their disputes. 1938 M.W.N. 218 Cr. 21. Where several persons are jointly put up under this section evidence of offences of each of them should not be admitted as against others and evidence and repetition should be against them of all. 54 M. 284. A finding under Sub Sec. (f) can be passed on evidence of general repute from police witnesses. Not necessary that the accused must be an ex-convict. I.L.R. 1938 M. 720.

order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

1, 2113. If the person in respect of whom such order is made is present in Court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

Procedure in respect of person present in Court.

2114. If such person is not present in Court, the Magistrate shall issue a summons or warrant requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court :

Summons or warrant in case of person not so present.

Provided that whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

1, 2115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Copy of order under section 112 to accompany summons or warrant.

2116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Power to dispense with personal attendance.

1, 2117. (1) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

Inquiry as to truth of information.

S. 112. Scope of this section. Notice need not set forth the particular breach of peace or wrongful acts in contemplation but need only state that there is a likelihood of a breach of peace. 1939 M.W.N. 1201 Cr. 177. For a magistrate to take action under section 112 he need not state specific time, place identity of persons threatened. 1987 M.W.N. 885 Cr. 169. But Magistrate should not merely refer to the police report but should extract and state plainly the facts on which he relies to issue proceedings. 1988 M.W.N. 875 Cr. 187. Also see 1930 M.W.N. 698 Cr. 154. The Court can at any stage amend the notice in the same way it can amend the charge at any stage of proceedings. 1938 M.W.N. 551 Cr. 99. The District Magistrate has power to transfer the case in which an order under this section is made by one magistrate to another magistrate, although outside the territorial jurisdiction. 1930 M.W.N. 698 Cr. 154. A Court acting under this section can take judicial notice of what took place since institution of proceedings and issue a supplemental order if necessary. 1941 (2) M.L.J. 1036. Where no particulars are given in the order under this section, it is not lawful for a magistrate to order execution of surety bond under section 110. 1941. M.W.N. 512 Cr. 60.

S. 114.—This is applicable only prior to service of preliminary order under section 113 and not as a preventive measure after the counter-petitioners have entered appearance. 1944 M.W.N. 587 Cr. 129.

S. 117—(8). The order under Sub sec. (8) must be made only on enquiry and on hearing the counter petitioners on notice to them 1934 M.W.N. 1333 Cr. 249.

1. Ss. 112, 113, 115 and 117 do not apply to an inquiry under S. 22 of the Sindhi Frontier Regulation, 1891 (III of 1892), or under S. 42 of the Frontier Crimes Regulation, 1901 (III of 1901).

2. Ss. 112 to 121 and 123 to 126 and S. 514 apply to all cases requiring security for good behaviour under S. 6 of the Punjab Frontier Crossing Regulation, 1873 (VII of 1873).

(2) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons-cases; and where the order requires security for good behaviour in the manner hereinafter prescribed for conducting trials and recording evidence in warrant-cases, except that no charge need be framed.

¹[(3) Pending the completion of the inquiry under sub-section (1) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 112 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded :

Provided that :—

- (a) no person against whom proceedings are not being taken under section 108, section 109, or section 110, shall be directed to execute a bond for maintaining good behaviour, and
- (b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 112].

²[(4)] For the purposes of this section the fact that a person is an habitual offender ³[or is so desperate and dangerous as to render his being at large without security hazardous to the community] may be proved by evidence of general repute or otherwise.

⁴[(5)] Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

⁴ 118. (1) If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly :

Provided—

first, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112;

secondly, that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

1. This sub-section was inserted by S. 19 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. Original sub-sections (d) and (e) were renumbered (4) and (5) respectively, *ibid*.

3. These words were inserted, *ibid*.

4. See footnote on p. 208, *supra*.

S. 118.—See G. B. P. Rule 265. An order under this section cannot be made merely on the hypothesis that if certain contingencies arose the person bound over may commit a breach of peace, 1931 M.W.N. 403 Cr. 82.

thirdly, that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Discharge of
person informed
against.

See Criminal Rules of Practice. Rule 255.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

120. (1) If any person, in respect of whom an order requiring security is made under section 106 or section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

122. (1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond :

Power to reject
sureties.

Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

(2) Such Magistrate shall, before holding inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him.

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (1), and the report of such Magistrate (if any) that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing :

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.]

1. See footnote on p. 206, *supra*.

2. Section 122 was substituted by S. 30 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

123. (1) If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next herein-after mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge or, if such Magistrate is a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit :

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

2[(3A) If security has been required in the course of the same proceedings from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge or the High Court under sub-section (2), such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.]

3[(3B) A Sessions Judge may in his discretion transfer any proceeding laid before him under sub-section (2) or sub-section (3A) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.]

(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

(5) Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behaviour ⁵[shall, where the proceedings have been taken under section 108 * * * ⁴ be simple and, where the proceedings have been taken under ⁵[section 109 or] section 110], be rigorous or simple as the Court or Magistrate in each case directs.

1. See footnote on p. 208 *supra*.

2. Sub-sections (3A) and (3B) were inserted by S. 21 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

3. These words and figures were substituted for the word "may"; *ibid*.

4. The words and figures "or section 109" were omitted by S. 2 of the Code of Criminal Procedure (Second Amendment) Act, 1926 (X of 1926).

5. These words and figures were inserted, *ibid*.

124. (1) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter * * * may be released without hazard to the community or to any other person, he may order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under the Chapter, the Chief Presidency or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

³[(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts :

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.]

⁴[(4) The ⁵[Provincial Government] may prescribe the conditions upon which a conditional discharge may be made.]

⁴[(5) If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate or Chief Presidency Magistrate by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.]

⁴[(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police-officer without warrant, and shall thereupon be produced before the District Magistrate or Chief Presidency Magistrate.

Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion.

A person remanded to prison under this sub-section shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor.]

125. The Chief Presidency or District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any Court in his district not superior to his Court.

Power of District Magistrate to cancel any bond for keeping the peace or good behaviour.

1. See footnote 2 on p. 208, *supra*.

2. The words "whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate," were omitted by S. 23 of the Code of Criminal Procedure (Amendment) Act 1928 (XVIII of 1928).

3. This sub-section was substituted for the original sub-section (3) *ibid*.

4. Sub-sections (4), (5) and (6) were inserted, *ibid*.

5. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

6. See footnote 2 on P. 208, *supra*.

126. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this Chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

§[126A.] 3[When a person for whose appearance a warrant or summons has been issued under the proviso to sub-section (3) of section 122 or under section 126, sub-section (2), appears or is brought before him, the Magistrate shall cancel the bond executed by such person] and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

CHAPTER IX.⁴

UNLAWFUL ASSEMBLIES

127. (1) Any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) This section applies also to the police in the town^{*5} of Calcutta

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer, 6[soldier, sailor or airman in His Majesty's Army, Navy or Air Force] or a volunteer enrolled under the Indian Volunteers Act, 1869, 7and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

1. See footnote 2 on p. 208, *supra*.

2. Sub-section (3) of section 126 was renumbered as S. 126A by S. 23 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

3. These words were substituted for the words "When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond," *ibid*.

4. The whole of this Chapter, so far as it applies to the City of Bombay is repealed by the City of Bombay Police Act, 1902 (Bom. Act IV of 1902)—see S. 2 (2) and Schedule A.

5. The letter "s" and the words "and Bombay" were repealed, *ibid*.

6. These words were substituted for the words "or soldier in Her Majesty's Army" by S. 2 and Sch. of the Amending Act, 1934 (XXV of 1934).

7. The Indian Volunteers Act, 1869 (XX of 1869) has since been repealed by the Auxiliary Force Act, 1920 (XLIX of 1920).

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Use of military force.

130. (1) When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869¹ to disperse such assembly by military force, and to arrest and confine such person forming part of it as the Magistrate may direct,² or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

Duty of officer commanding troops required by Magistrate to disperse assembly.

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force and may arrest and confine any persons forming part of it, in order to disperse such Assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Protection against prosecution for acts done under this Chapter.

132. No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the ¹ [Provincial Government]; and—

- (a) no Magistrate or police-officer acting under this Chapter in good faith,
- (b) no officer acting under section 131 in good faith,
- (c) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, and
- (d) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence :

³[Provided that no such prosecution shall be instituted in any Criminal Court against any officer or soldier in His Majesty's Army except with the sanction of the ⁴[Central Government].]

1. The Indian Volunteers Act, 1869 (XX of 1869) has since been repealed by the Auxiliary Force Act, 1920 (XLIX of 1920).

2. These words were substituted for the words " Local Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. This proviso was added by S. 2 and Sch. I of the Devolution Act, 1920 (XXXVIII of 1920).

4. These words were substituted for the words " Governor General in Council " by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 132.—The provision for sanction is a protection more than that afforded by section 79 I.P.C. Protection under section 79 is a protection against conviction whereas protection under this section is a protection against trial and can only operate before the trial begins. 1932 M.W.N. 1235 Cr. 258. Section is a bar against the trial of police officers for offences under sections 341 and 342 acting under Chapter 9 of this Code. 1937 M.W.N. 1245 Cr. 259.

CHAPTER X.

PUBLIC NUISANCES.

Conditional order
for removal of
nuisance.

1[133. (1) Whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class considers, on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or

that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order,

to remove such obstruction or nuisance ; or

to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation ; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed ; or

to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure ; or

to remove or support such tree ; or

to alter the disposal of such substance ; or

to fence such tank, well or excavation, as the case may be ; or

to destroy, confine, or dispose of such dangerous animal in the manner provided in the said order ;

1. Section 133 was substituted by S. 94 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

S. 133.—Power of a Magistrate to abate nuisance under this section are not curtailed by provisions of section 44 of the Madras Public Health Act and 135 of the Madras Local Boards Act, 1943. M.W.N. 177 Cr. 20.

or, if he objects so to do,

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A 'public place' includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.]

134. (1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the ¹[Provincial Government] may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Persons to whom order is addressed to obey or show cause or claim jury.

135. The person against whom such order is made shall—

(a) perform, within the time ²[and in the manner] specified in the order, the act directed thereby; or

(b) appear in accordance with such order and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

136. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code, and the order shall be made absolute.

Procedure where he appears to show cause.

137. (1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute.

Procedure where he claims jury.

138. (1) On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(a) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words were inserted by S. 25 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

S. 137.—Magistrate can proceed under this section only if he finds that there is no reliable evidence in support of denial of public right in the place in question. Otherwise he has to stay proceedings. I.L.R. 1939 M. 1080. Where a magistrate sitting alone makes an order under this section absolute and he has no power to modify the original order. 1943 M.W.N. 129 Cr. 16.

(b) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(c) fix a time within which they are to return their verdict.

(2) The time so fixed may, for good cause shown, be extended by the Magistrate.

139. (1) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

(2) In other cases no further proceedings shall be taken under this Chapter.

1[139-A. (1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 137 or section 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 or section 138, as the case may require.

(3) A person who has, on being questioned by the Magistrate under subsection (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under section 138.]

140. (1) When an order has been made absolute under section 136, section 137 or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within

1. Section 139-A was inserted by S. 26 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

S. 139A.—The District Magistrate has no jurisdiction to revise or set aside the order of the Taluk Magistrate passed under this section. He can only submit the records to the High Court under section 488 of this Code. 1963 M.W.N. 785 Cr. 128.

S. 140.—This section does not apply to a case where an order under section 138 was not made absolute and proceedings dropped under clause (2) of section 139: 1941 M.W.N. 513 Cr. 100.

or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith under this section.

141. If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

Procedure on failure to appoint jury or omission to return verdict.

142. (1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

Injunction pending inquiry.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

143. A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the ¹[Provincial Government] or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law.

Magistrate may prohibit repetition or continuance of public nuisance.

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

144. (1) In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-divisional Magistrate, or of any other Magistrate ²[(not being a Magistrate of the third class)] specially empowered by the ¹[Provincial Government] or the Chief Presidency Magistrate or the District Magistrate to act under this section, ³[there is sufficient ground for proceeding under this section and] immediate prevention or speedy remedy is desirable,

Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.

See Criminal Rules of Practice. Rule 424.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words and brackets were inserted by S. 27 of the Code of Criminal Procedure (Amendment) Act, 1923 (XXVIII of 1923).

3. These words were inserted, *ibid*.

such Magistrate may, be a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may, [either on his own motion or on the application of any person aggrieved], rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

²[(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.]

³(6) No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the ⁴[Provincial Government] by notification in the official Gazette, otherwise directs.

S. 144.—An order under this section can only be made when the magistrate is satisfied that there is no other means to prevent a breach of peace. 1938 M.W.N. 606 Cr. 126. The section contains no provision to suggest that a superior magistrate is prohibited from rescinding or altering an order merely because the subordinate magistrate has done so or refused to do so. 1937 M.W.N. 56 Cr. 16 following 1936 M.W.N. 1089 Cr. 189. Essentials for an order under this section. Proceedings under this section are subject to revision by the High Court. 1930 M.W.N. 849 Cr. 193. Also 1930 M.W.N. 811 Cr. 185. Also 1932 M.W.N. 726 Cr. 162. Under this section a superior magistrate can rescind or alter the order of the subordinate magistrate without hearing the person at whose instance the original order was passed but on hearing from the party applying for a revision. I.L.R. 1937 M. 170. Also 1937 M.W.N. 56 Cr. 16. The jurisdiction exercised by such subordinate magistrate is neither appellate nor revisional and are defined by sub-section (4). 1937 M.W.N. 210 Cr. 42. Also 1932 M.W.N. 726 Cr. 162. He cannot make a new order under sub-section (4) 1938 M.W.N. 974 Cr. 178. In view of clauses 4 and 5 of this section, it is the duty of the magistrate to give an early opportunity to persons aggrieved to show cause against it and so passing successively *ex parte* orders under this section procedure of the magistrate was wrong 1933 M.W.N. 144 Cr. 25. Person applying for an order under this section is said to institute criminal proceedings within the scope of section 311 I.P.C. 1938 M.W.N. 1363 Cr. 195. When proceedings under this section are altered to one under section 145 Cr. P. C. without a preliminary order under section 145 (1) the order of alteration was without jurisdiction. 1936 M.W.N. 647 Cr. 181. S.D.M. has power to pass an order under clause (1) even where subordinate magistrate has refused to pass an order. Independent enquiry not necessary 1941 M.W.N. 807 Cr. 123. An order under this section is only a temporary order and it does not affect the rights of parties. I.L.R. 1941 M. 544.

1. These words were inserted by S. 27 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. This sub-section were inserted, *ibid*.

3. Original sub-section (5) was re-numbered (6), *ibid*.

4. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

145. (1) Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police-report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds

Procedure where dispute concerning land, etc., is likely to cause breach of peace.

of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

S. 145.—An order under this section cannot be made an instrument for turning out another man out of possession of other lands. 8 M.L.A. 199 (P.C.) Order under this section does not decide any question of title. 12 M.L.J. 88. (P.C.) An order under this section is not valid if the magistrate does not decide as a matter of fact whether the dispute was likely to lead to a breach of peace or disturbance to public tranquillity. 1939 M.W.N. 636 Cr. 140. Magistrate is not bound by the report of the police even if it discloses grounds for apprehending a breach of peace. 1931 M.W.N. 1285 Cr. 237. Even if the police complaint under section 107 Cr. P. C., magistrate can continue the proceedings as if under this section 1935 M.W.N. 813 Cr. 141. In a petition under this section it is not permissible for a magistrate to displace the petitioner entitled to possession of undivided share of the property in question. 1940 M.W.N. 801 Cr. 91. A servant cannot set up possession on behalf of his master as possession under this section, for an order against the master. 1932 M.W.N. 1079 Cr. 219. Under Sub-section (4) the magistrate has to find who was in actual possession on the date of the preliminary order. 1932 M.W.N. 72 Cr. 8. In cases of items of property claimed by more than one person jointly and severally the magistrate must give a definite finding as to the fact of possession of each item. 1938 M.W.N. 1261 Cr. 192. For this object the magistrate can take further evidence if need be to enable him to come to conclusion. 1937 M.W.N. 326 Cr. 54. Under Sub-section (5) though the possession of documents raises a presumption of title other party cannot be prevented from adducing evidence of actual physical possession of property. 1935 M.W.N. 1064 Cr. 192. Sub-section (4) entitles even a squatter in possession to the protection unless such possession is within 2 months before the petition. 1937 M.W.N. 781 Cr. 156. If dispossession was just a day prior to the period of two months it does not affect the order. 1939 M.W.N. 836 Cr. 45. Under Sub-section 6 if an order be made with certain directions outside the scope of the court such an order cannot be upheld. 1939 M.W.N. 737 Cr. 101. Before initiation of proceedings under this section, a preliminary order is necessary. 1933 M.W.N. 810 Cr. 56. The duty of a magistrate is to receive all evidence tendered by the petitioners and a refusal vitiates his order. 1934 M.W.N. 693 Cr. 193. It is open to a magistrate to renew the proceedings under this section if on a report of a receiver appointed by the court that there is likelihood of a breach of peace. 1934 M.W.N. 738 Cr. 141. Where an order of magistrate under sub-section (1) does not state any of the matters set out therein and final order under Sub-section 6 does not decide who was in possession the proceedings are erroneous. 1931 M.W.N. 1317 Cr. 377. Meaning of "actual possession" as distinguished from "possession implied or constructive. 1938 M.W.N. 252 Cr. 41. Award of costs in a case under this section should be contemporaneous or soon after disposal. 1938 M.W.N. 1011 Cr. 181. High Court has jurisdiction to bring the L. Ra. of the petitioner criminal revision against an order under this section in a 1941. (3) M.L.J. 1017. In a case where the dispute is as to right of taking rain water from the field of a person through the band separating it from a neighbour's field magistrate cannot act under section 145 but only under section 147. 1941 (2) M.L.J. 875. Where an order passed on representations alleged to have been made to S.I. by the petitioners and not on record it cannot be sustained 1941 M.W.N. 678 Cr. 82. Where magistrate appointed a receiver and H.R.E. Board appointed trustee possession must be restored to the trustee. 1941 M.W.N. 767 Cr. 95. Possession of a tenant may be deemed as possession of landlord as against rival landlord and a declaration may be made even though the tenant is not a party to the proceedings. 1915 M.W.N. 101 Cr. 20. Person dispossessed may be deemed in possession on the date of preliminary order only if such dispossession was within two months of that date. 1945 M.W.N. 139 Cr. 25. Possession of property dispossessed by an *ex parte* order under section 144 re-entry into possession by person so dispossessed cannot be held to be wrongful dispossession on account of *ex parte* order. This section is concerned with the persons in actual possession but even in disputes by absentee landlord. 1942 M.W.N. 372, Cr. 70.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, ¹[receive all such evidence as may be] produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject :

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date :

Provided also, that if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) If the Magistrate decides that one of the parties was ²[or should] under the first proviso to sub-section (4) be treated as being] in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction ³[and when he proceeds under the first proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed].

⁴[(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.]

⁵[(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale proceeds thereof, as he thinks fit.]

1. These words were substituted for the words "receive the evidence" by S. 28 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. These words were inserted, *ibid.*

3. These words were added, *ibid.*

4. Sub-section (7) was substituted for the original sub-section (7), by S. 28 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

5. Sub-sections (9), (9) and (10) were added, *ibid.*

¹[(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.]

¹[(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.]

146. (1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof:

Power to attach
subject of disputes.

²[Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.]

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit ³[and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court] appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the ⁴Code of Civil Procedure:

⁵[Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.]

147. (1) Whenever any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in section 145, sub-section (2) (whether such right, be claimed as an easement or otherwise), within the local limits of his jurisdiction, he may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by pleader

Disputes concerning
rights of user of
immovable prop-
erty, etc.

1. Sub-sections 8, 9 and 10 were added by S. 28 of Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. This proviso was added by S. 29, *ibid*.

3. These words were inserted, *ibid*.

4. See now the Code of Civil Procedure, 1908 (V of 1908).

5. This proviso was added by S. 29 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

6. Section 147 was substituted by S. 30, *ibid*.

S. 146.—It is not permissible to attach moveable property which is in joint possession. Attachment under this section can only be made if none of the contending parties is in possession or if the magistrate is unable to determine who is in possession. 1935 M.W.N. 367 Cr. 70, following (1914) 27. M.L.J. 169. Where magistrate passed an order attaching certain crops and to be sold in public auction the sale proceeds to be deposited in Court and also directed the parties later to seek their redress in a Civil Court, the confirmation of attachment under this section is without jurisdiction. 1937 M.W.N. 55 Cr. 15. There is no provision under this section to appoint a receiver during the pendency of a dispute; a receiver can be appointed under sub-section (4) only for an order as passed attaching the property under Sub-section (1) 1933 M.W.N. 917 Cr. 162. Where receiver appointed by Court under Sub-section 2 leased out the property under orders of court got under a fraud magistrate can set aside the lease. 1932 M.W.N. 1154 Cr. 290. Attachment of undivided share of a village is not permissible. 1941 M.W.N. 708 Cr. 104. An order under this section is conceivable only in the absence of an order of competent court binding on the parties. 1944 M.W.N. 499 Cr. 119.

within a time to be fixed by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the matter in the manner provided in section 145, and the provisions of that section shall, as far as may be, be applicable in the case of such inquiry,

(2) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right :

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

(4) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction.]

148. (1) Whenever a local inquiry is necessary for the purposes of this Chapter, any District Magistrate or Sub-divisional Magistrate may deput¹ any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under this Chapter * * * * the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. ² [Such costs may include any expenses incurred in respect of witnesses, and of pleaders' fees, which the Court may consider reasonable.]

S. 147.—This section does not empower magistrate to take action to regulate rights of parties in public streets as there can be no right enforceable by a Civil Court. 1936 M.W.N. 494 Cr. 86. Right to fish in sea is not a legal right for the purposes of this section as no one can acquire an exclusive right in that respect. 1935 M.W.N. 181 Cr. 37. This section does not apply in a case where an injunction has been granted by a Civil Court. 1934 M.W.N. 735 Cr. 143. The dispute regarding the right to worship as a poojari of the temple falls within section 145 (2) and as such comes within the provision of this section. 1938 M.W.N. 318 Cr. 56. The proviso to this section must be construed strictly and the section can only be invoked when the right has been exercised on the last of such occasion. "Exercise" means less than "accomplish." 1901 M.W.N. 554. Cr. 106. Where dam was constructed by one not a party to the proceeding an order to remove dam cannot be issued. 1941 M.W.N. 764 Cr. 92.

S. 148.—Under guise of calling for a report under clause (1) of this section the Magistrate ought not to depute a subordinate for making entire investigation. 1932 M.W.N. 425 Cr. 87. Also see 1934 M.W.N. 687 Cr. 127. Award of costs by a subsequent order cannot be sustained. 1941 M.W.N. 63 Cr. 7. Successor to Magistrate who passed an order under section 147 cannot pass an order as to costs under this section. 1948 M.W.N. 326 Cr. 88.

1. The words "for witnesses, or pleaders' fees, or both" were omitted by S. 31 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. These words were substituted for the words "All costs so directed to be paid may be recovered as if they were fines", *ibid*.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE

Police to prevent
cognizable offences.

149. Every police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

150. Every police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

151. A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

152. A police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public landmark or buoy or other mark used for navigation.

153. (1) Any officer in charge of a police-station may, without a warrant enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

PART V—INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE,

CHAPTER XIV.

154. Every information relating to the commission of a cognizable offence if given orally to an officer-in-charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the ¹[Provincial Government] may prescribe in this behalf.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 154.—No statutory right on the part of the police to investigate into circumstances of an alleged cognizable crime without requiring an authority from the judicial authorities, 1945 M.W.N. 49 Cr. 9 (P.C.).

155. (1) When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

(2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

156. (1) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

157. (1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers ²[not being below such rank as the ³[Provincial Government] may, by general or special order, prescribe in this behalf] to proceed, to the spot, to investigate the facts and circumstances of the case, ⁴[and, if necessary, to take measures] for the discovery and arrest of the offender :

Provided as follows :—

(a) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot ;

Where local investigation dispensed with.

1. This section, so far as it applies to the police in the town of Bombay, is repealed by S. 2 (1) and Schedule A to the City of Bombay Police Act, 1902 (Bom. Act IV of 1902).

2. These words were inserted by S. 32 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

3. These words were substituted for the words " Local Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. These words were substituted for the words " and to take such measures as may be necessary " by S. 32 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

S. 156.—The police on receiving a complaint forwarded under section 202 Cr. P. C. can investigate under this section. I.L.R. 54 M. 598. On presentation of a complaint the magistrate has no option to take cognizance of it under chapter 16 and cannot refer to the police for investigation under Sub-section 3. 1936 M.W.N. 1094 Cr. 194.

Where police-officer in charge sees no sufficient ground for investigation.

(b) if it appear to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section, ¹[and, in the case mentioned in clause (b), such officer shall also forthwith notify to the informant, if any, such manner as may be prescribed by the ² [Provincial Government], the fact that he will not investigate the case or cause it to be investigated.]

158. (1) Every report sent to a Magistrate under section 157 shall, if the ² [Provincial Government] so directs, be submitted through such superior officer of police as the ² [Provincial Government], by general or special order, appoints in that behalf.

Report under section 157 how submitted.

(2) Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

159. Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Power to hold investigation or preliminary inquiry.

160. Any police-officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Police-officer's power to require attendance of witnesses.

161. (1) Any police-officer making an investigation under this Chapter ³ [or any police-officer not below such rank as the ² [Provincial Government] may, by general or special order, prescribe in this behalf, acting on the requisition of such officer] may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

Examination of witnesses by police.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

1. These words were added by S. 82 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. These words were inserted by S. 88 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

S. 161.—A statement to the police under this section is not defamation falling within the exception 9 to section 499 I.P.C. 1938 M.W.N. 217 Cr. 39.

1[(3) The Police Officer may reduce into writing any statement made to him in the course of an examination under the section and if he does so, he shall make a separate record of the statement of each such person whose statement he records.]

162. ² [(1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Statements to police not to be signed up of such statements in evidence.

Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused, refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872. When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

Provided, further that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.]

1. This sub-section was added by Act II of 1945.

2. This sub-section was substituted by S. 34 of the Code of Criminal Procedure (Amendment Act, 1928 (XVIII of 1928)).

S. 162.—A statement is not admissible under this section even when made by person ultimately accused, 1939 M.W.N. 185, Cr. 17 (P.C.). Any person includes statement made by accused persons accused of the offence under investigation. S. 27 of I.E.A. is exception to this rule, 55 M. 908 (F.B.). Now see Act XV of 1941. Also 1939 M.W.N. 877 (r. 187, I.L.R. 1939 M. 947. Section includes statements during investigation by an accused when arrested, 1935 M.W.N. 82 Cr. 18. 1940 M.W.N. 987 Cr. 117. Statements made to a C.I.D. officer fall within the scope of the section, 1938 M.W.N. 825 Cr. 141. Whether the statement was made during investigation or not is a question of fact, 1938 M.W.N. 905 Cr. 157. Complaint by accused containing *inter alia* a plea of self defence not inadmissible, 1939 M.W.N. 513 Cr. 85. Statement made by accused to strangers even if it helps the defence, is inadmissible, 1931 M.W.N. 715 Cr. 189. Statements given to police officers investigating under Chapter VIII do not come under this section, 56 M. 987. Section 165 I.E.A. does not enable court to elicit statements excluded by this section, 1932 M.W.N. 625 Cr. 106. Statements may be used in any other trial in respect of which the investigation is not made, 1932 M.W.N. 1074 Cr. 214, but could not be used in a subsequent enquiry or trial, I.L.R. 56 M. 475. Statement by a witness when accused was arrested after a long time inadmissible, 1935 M.W.N. 820 Cr. 148. The accused is not entitled as of right to copies of statements. Procedure and mode of proof, 1933 M.W.N. 919; Cr. 163. But see 1934 M.W.N. 1357 (r. 258. Not necessary for accused to establish contradiction, I.L.R. 1938 M. 180. Accused not entitled to copies of statements to Excise Inspector, 1933 M.W.N. 1270 Cr. 202; may be used to contradict (not to corroborate) proved as under S. 145 I.E.A., I.L.R. 56 Mad. 231. Mediators' report containing record of identification parade proceedings is inadmissible, 1941 M.W.N. 521 Cr. 61. Proper stage at which to apply for copies of statements is at the beginning of cross-examination but practice is otherwise, 1943 M.W.N. 595 Cr. 198. 1929 M.W.N. Cr. 189. Absence of a statement in case diary is not proof that such statement was not made, 1942 M.W.N. 591 Cr. 125. Also 1943 M.W.N. 49 Cr. 10. Investigating officers expected only to make a short record of what witnesses said and not expected to record unimportant details. Absence of such details in case diary is no proof that statements were not made, 1944 M.W.N. 213 Cr. 51.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1), of the Indian Evidence Act, 1872 ¹ [or to affect the provisions of Section 27 of that Act.]

163. (1) No police-officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

No inducement to be offered.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

164. (1) ² [Any Presidency Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the ³ [Provincial Government] may, if he is not a police-officer] record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

Power to record statements and confessions.

(2) Such statements shall be recorded in such of the manners herein-after prescribed for recording evidence as is, in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 304, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) ⁴ [A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if

1. These words were added by S. 2 of Code of Criminal Procedure (Amendment) Act, 1941 (Act XV of 1941).

2. These words were substituted for the words "Every Magistrate not being a police-officer may" by S. 35 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

3. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. These words were substituted for the words "No Magistrate" by S. 35 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

S. 164.—Statement is not substantive evidence, 1936 M.W.N. 1889 Cr. 249. See Rule 85 of Criminal Rules of Practice for the typical questions to be asked. Not giving a certificate and caution does not necessarily make statement inadmissible, 55 M. 711; 1933 M.W.N. 714 Cr. 150; 1935 M.W.N. 809 Cr. 137. The Magistrate, when he knows statement is confessional must administer the caution, 1937 M.W.N. 1325 Cr. 269. Requisites of Sub-section (3) must be satisfied, 1940 M.W.N. 358 Cr. 50. Confession must be recorded in strict conformity with the requirements of the section, 1936 M.W.N. 745 Cr. 141 (P.C.). But where omission to administer warning has been held to vitiate confession, 1937 M.W.N. 178 Cr. 34. But see 1937 M.W.N. 503 Cr. 122 also 1937 M.W.N. 977 Cr. 198. Retracted confession not acted upon see 1930 M.W.N. 350 Cr. 9. Confession due to threat of police and retracted useless, 1933 M.W.N. 723 Cr. 111. No absolute rule that Court should not act upon retracted confession but if it be soon after from the custody unsafe, 1936 M.W.N. 625 Cr. 109. Section does not override section 39 I.E.A., 55 M. 711. Section does not exclude confessions otherwise admissible, 55 M. 717. Statement is a "stage" of a judicial proceeding under S. 476. 1933 M.W.N. 100 Cr. 12. and one also "in relation to a subsequent proceeding" 1933 M.W.N. 902, Cr. 146. Also 1933 M.W.N. 806 Cr. 141 but it is not evidence in a judicial proceeding for purposes of section 193. 1933 M.W.N. 251 Cr. 43. Copies of statements under this section should be given to the accused, 1944 M.W.N. 686 Cr. 157. Statement under this section is not substantive evidence. Statement can be used to discredit the witness even in Court and not for any other purpose. 1946 M.W.N. Cr. 37, (P.C.) Statement can be used to cross-examine person who made it and to discredit the witness but that does not establish that what is stated out of court under this section is true. 1946 M.W.N. Cr. 21 (P.C.)

he does so it may be used as evidence against him and no Magistrate] shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

" I [I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe] that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.,
Magistrate."

Explanation.—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

See Criminal Rules of Practice. Rule 85.

165 2 [(1) Whenever an officer in charge of a police-station or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purpose of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.]

3 [(2) A police-officer proceeding under sub-section (1) shall, if practicable, conduct the search in person.]

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may 3 [after recording in writing his reasons for so doing] require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing 4 [specifying the place to be searched and, so far as possible, the thing for which search is to be made]; and such subordinate officer may thereupon search for such thing in such place.

(4) the provisions of this Code as to search-warrants 5 [and the general provisions as to searches contained in section 102 and section 103] shall, so far as may be, apply to a search made under this section.

6 [(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take

1. These words were substituted for the words "I believe" by S. 35 of the Code of Criminal Procedure (Third Amendment) Act, 1928 (XVIII of 1928).

2. Sub-sections (1) and (2) were substituted by S. 36, *ibid.*

3. These words were inserted, *ibid.*

4. These words were substituted for the words "specifying the document or thing for which search is to be made and the place to be searched", *ibid.*

5. These words and figures were inserted, by S. 36 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

6. Sub-section (5) was added, *ibid.*

cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate:

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.]

166. (1) An officer in charge of a police-station ¹[or a police-officer not being below the rank of sub-inspector making an investigation] may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

When officer in charge of police-station may require another to issue search warrant.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

²[(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station or a police-officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of section 165, as if such place were within the limits of his own station.]

²[(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 103, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in section 165, sub-sections (1) and (3).]

³[(5) The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under sub-section (4):

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.]

167. (1) Whenever ⁴[any person is arrested and detained in custody, and it appears that the] investigation ⁵ * * * cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station ⁶[or the police-officer making the investigation if he is not below the rank of sub-inspector] shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed

Procedure when investigation cannot be completed in twenty-four hours.

1. These words were inserted by S. 37, of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. Sub-sections (3) and (4) were added, *ibid.*

3. Sub-section (5) was added by S. 37 *ibid.*

4. These words were substituted for the words "it appears that any" by S. 38, *ibid.*

5. The words "under this Chapter" were omitted, *ibid.*

6. These words were inserted, *ibid.*

relating to the case, and shall at the same time forward the accused 1* * * to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :

2[Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the [Provincial Government] shall authorise detention in the custody of the police.]

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

168. When any subordinate police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police-station.

Report of investigation by subordinate police-officer.

169. If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station 4[or to the police officer making the investigation] that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or commit him for trial.

Release of accused when evidence deficient.

170. (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused or commit him for trial or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

Case to be sent to Magistrate when evidence is sufficient

(2) When the officer in charge of a police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon

1. The words and brackets "(if any)" were omitted, by S. 37 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. This proviso was added, *ibid*.

3. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. These words were inserted by S. 39 of the Code of the Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

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(5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Complainants and witnesses not to be required to accompany Police-officer

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer,

Complainants and witnesses not to be subjected to restraint.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond :

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170 the officer in charge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Recusant complainant or witness may be forwarded in custody.

172. (1) Every police-officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he begun and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Diary of proceedings in investigation.

(2) Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court ; but, if they are used by the police-officer who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer the provisions of the Indian Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

1 of 1872.

1. Sub-section (4) was repealed by S. 2 of the Code of Criminal Procedure (Amendment) Act, 1926 (II of 1926).

S. 172. Police Diary kept under this section may be used by Court to be of assistance and elucidation but entries therein purporting to be statements made by persons could not be used even for discrediting the witnesses 1917 M.W.N. 523 (P.C.)

173. ¹ [(1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall—

Report of police-officer.

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by ² [Provincial Government] setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the ² [Provincial Government] the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.]

(2) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the ² [Provincial Government], by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

³ [(4) A copy of any report forwarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial :

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.]

174. (1) The officer in charge of a police-station or some other police officer specially empowered by the ² [Provincial Government] in that behalf, on receiving information that a person—

Police to inquire and report on suicide, etc.

(a) has committed suicide, or

(b) has been killed by another, or by an animal, or by machinery, or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the ² [Provincial Government], or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of

1. This sub-section was substituted by S. 40 of the Code of Criminal Procedure (Amendment) Act, 1933 (XVIII of 1933).

2. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. Sub-section (4) was inserted by S. 40 of the Code of Criminal Procedure (Amendment) Act, 1933 (XVIII of 1933).

such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

See Criminal Rules of Practice, Rule 40.

(2) The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do, he shall, subject to such rules as the ¹[Provincial Government] may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the ¹ [Provincial Government], if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorised to hold inquests.

(5) The following Magistrates are empowered to hold inquests, namely, any District Magistrate, ²[Sub-divisional Magistrate or Magistrate of the first class], and any Magistrate especially empowered in this behalf by the ¹ [Provincial Government] or the District Magistrate.

175. (1) A police officer proceeding under section 174 may, by order in writing summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

176. (1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clause (a), (b) and (c) of sub-section (1), any Magistrate so empowered may, hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation Indian Laws) Order 1923.

2. These words were substituted for the words "or Sub-divisional Magistrate" by S. 41 of the Code of Criminal Procedure (Amendment) Act, 1933 (XVIII of 1933).

S. 176.—No objection to Magistrate granting copies of statement recorded under this section to the accused 1944 M.W.N. 697 Cr. 158.

- (2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined ¹.
- Power to disinter
corpses.

PART VI.—PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.
- Ordinary place of
inquiry and trial.

178. Notwithstanding anything contained in section 177, the ² [Provincial Government] may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division:
- Power to order
cases to be tried in
different sessions
divisions.

Provided that such direction is not repugnant to any direction previously issued by the High Court under section 15 of the Indian High Courts Act, 1861, ³[or section 107 of the Government of India Act, 1915], ⁴[or section 224 of the Government of India Act, 1935] or under this Code, section 526.

24 & 25 Vict., c.
101. 5 & 6 Geo. 5
c. 61. 26 Geo. 5.
c. 2.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.
- Accused triable
in district where
act is done or
where consequence
ensues.

Illustrations.

(a) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried by X or Z.

1. A similar power is entrusted to the Coroners of Calcutta and Bombay. See the Coroners Act, 1871 (IV of 1871) S. 11.

2. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order 1937.

3. These words and figures were inserted by S. 2 and Schedule of the Amending Act, 1916 (XIII of 1916).

4. These words and figures were inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 177.—The magistrate of the place, the D.S.P. of which place received letter containing false charge has jurisdiction to try the accused under this section. 1943 M.W.N. 290 Cr. 38. Also 1943. M.W.N. 335 Cr. 63.

S. 179.—Section does not apply to an offence under section 290 I.P.C. committed in adjacent foreign territory. 1934 M.W.N. 1316, Cr. 244. Where accused entered into a conspiracy at B and were charged under Section 420 read with S. 190-B I.P.C. the fact one or two acts of cheating was done at P, no jurisdiction for magistrate at P. 1935 M.W.N. 1168, Cr. 208; but a charge under section 420 can be tried at place where complainant was cheated. 1940 M.W.N. 391 Cr. 69.

(b) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y, or Court Z, to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(c) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

(d) A is wounded in the Native State of Baroda, and dies of his wounds in Poona. The offence of causing A's death may be inquired into and tried in Poona.

180. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Place of trial where act is offence by reason of relation to other offence.

Illustrations.

(a) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

181. (1) The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Being a thug or belonging to a gang of dacoits, escape from custody, etc.

(2) The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

Criminal misappropriation and criminal breach of trust.

¹[(3) The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.]

Theft.

(4) The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

Kidnapping and abduction.

1. This sub-section was substituted by S. 42 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

S. 181.—(3) Where jowels were entrusted to accused at G to be pledged at N, the accused later redeemed them and denied all knowledge, held the magistrate of the place where the offence was committed after redemption has got jurisdiction 1934 M.W.N. 849 Cr. 113.

182. When it is uncertain in which of several local areas an offence was committed; or

Place of inquiry or trial where scene of offence is uncertain, or not in one district only, or where offence is continuing, or consists of several acts.

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, pass in the course of that journey or voyage.

184. All offences against the provisions of any law for the time being in force relating to Railways,¹ Telegraphs,² the Post-office³ or Arms and Ammunition⁴ may be inquired into or tried in a presidency-town, whether the offence is stated to have been committed within such town or not:

Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

⁵[185. (1) Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that High Court.

(2) Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence, the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced may direct the trial of such offender to be held in any Court subordinate to it, and if it so decides all other proceedings against such person in respect of such offence shall be discontinued. If such High Court, upon the matter having been brought to its notice, does not so decide, any other High Court, within the local limits of whose appellate criminal jurisdiction such proceedings are pending may give a like direction, and upon its so doing all other such proceedings shall be discontinued.]

1. See the Indian Railways Act, 1890 (IX of 1890).

2. See the Indian Telegraphs Act, 1885 (XIII of 1885).

3. See the Indian Post Office Act, 1898 (VI of 1898).

4. See the Indian Arms Act, 1878 (XI of 1878).

5. Section 185 was substituted by S. 43 of the Code of Criminal Procedure (Amendment) Act, 1932 (XVIII of 1932).

S. 182.—Where false information is given to public servant to act on it, held the offence committed at the place where information reaches the public servant. 1932 M.W.N. 451 Cr. 67.

186. (1) When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or if he is specially empowered in this behalf by the ¹[Provincial Government], a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of section 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or if such offence is bailable, taken a bond with or without sureties for his appearance before such Magistrate.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

Magistrate's procedure on arrest.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

187. (1) If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant or shall be sent to the Magistrate by whom such warrant was issued.

Procedure where warrant issued by subordinate Magistrate.

(2) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of British subjects for offences committed out of British India.

188. When a Native Indian subject of Her Majesty commits an offence at any place without and beyond the limits of British India, or

when any British subject commits an offence in the territories of any Native Prince or Chief in India, or

when a servant of the Queen (whether a British subject or not) commits an offence in the territories of any Native Prince or Chief in India

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 188.—See 1935 M.W.N. 325 Cr. 53. Where bulls were stolen in a State and sold in British territory the magistrate in British territory has no jurisdiction. 1935 M.W.N. 1295 Cr. 220. Certificate of political agent necessary in case where part of offence was committed in a Provincial State. 1932 M.W.N. 1229 Cr. 257. 1935 M.W.N. 325 Cr. 53. Or the sanction of the Provincial Government under Sec. 193 Cr. P. C. 1931 M.W.N. 1316 Cr. 244, 1939 M.W.N. 742 Cr. 105.

¹ [or when any person commits an offence on any ship or aircraft registered in British India wherever it may be,]

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found :

Provided that ²[notwithstanding anything in any of the preceding sections of this Chapter] no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India; and, where there is no Political Agent, the sanction of the ³[Provincial Government] shall be required :

Provided, also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under ⁴[the Indian Extradition Act, 1903], in respect of the same offence in any territory beyond the limits of British India.

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the ³[Provincial Government] may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

Power to direct copies of depositions and exhibits to be received in evidence.

B.—Conditions requisite for initiation of Proceedings.

190. (1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, and any other Magistrate, specially empowered in this behalf, may take cognizance of any offence—

Cognizance of offences by Magistrates.

1. These words were inserted by S. 3 of the Offences on Ships and Aircraft Act, 1940 (IV of 1940).
2. These words were inserted by S. 44 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

3. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. These words and figures were substituted for the words and figures "the Foreign Jurisdiction and Extradition Act, 1879" by S. 2 and Sch. 1 of the Repealing and Amending Act, 1927 (X of 1927).

S. 190.—Where complaint is under section 500 I.P.C. magistrate cannot take it on file under section 182. 1941 M.W.N. 676 Cr. 80. Filing of a charge sheet by the police is a proper method of bringing non-cognisable offence before Court, 1912 M.W.N. 224 Cr. 56. This section covers making of complaints of offences under the Indian Companies Act, 1942 M.W.N. 121 Cr. 26. Where referred charge sheet disclosed an offence magistrate can direct police to file a fresh charge sheet, 1943 M.W.N. 804 Cr. 190 distinguishing, 1941 M.W.N. 548 Cr. 100. No provision of law enables a Sessions Judge to take cognizance of offence himself or to direct a magistrate to take cognizance as it is not a court of first instance, 1941 M.W.N. 427 Cr. 79.

(1) (b) On a complaint of kidnapping police put in a referred charge sheet and the magistrate ordered them to file a charge sheet. This order is not a legal order and he cannot said to have taken cognizance under this section. Mere application by Magistrate of his mind does not amount to cognizance, 1922 M.W.N. 548 Cr. 100.

(1) (c) is concerned with extra-judicial information knowledge or suspicion and nothing to do with knowledge gathered from the evidence given during trial, I.L.R. 1938 M. 814. If court makes a valid complaint under section 476 for one offence court trying it may take cognizance of any other offence which may arise on facts stated, 1938 M.W.N. 1961 Cr. 198. Magistrate framing charge not upon Police report not competent to try case without opportunity to accused 59 Mad. 442.

- (a) upon receiving a complaint of facts which constitute such offence ;
 1[(b) upon a report in writing of such facts made by any police-officer ;]
 (c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The ²[Provincial Government], or the District Magistrate subject to the general or special orders of the ²[Provincial Government], may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or commit for trial.

(3) The ²[Provincial Government] may empower any magistrate of the first or second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or commit for trial.

191. When a Magistrate takes cognizance of an offence under sub-section (1), clause (c), of the preceding section, the accused ^{Transfer or} shall, before any evidence is taken, be informed that he is ^{commitment on} entitled to have the case tried by another Court, and if the ^{application of} accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be committed to the Court of Session or transferred to another Magistrate.

192. (1) Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may transfer any case, of which he ^{Transfer of cases} has taken cognizance, for inquiry or trial, to any Magis- ^{by Magistrates.}trate subordinate to him.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

193. (1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session ^{Cognizance of} shall take cognizance of any offence as a Court of original ^{offences by Courts} jurisdiction unless the accused has been committed to it by ^{of Session.} a Magistrate duly empowered in that behalf.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the ² [Provincial Government] by general or special order may direct them to try, or ³ * * * as the Sessions Judge of the division, by general or special order, may make over to them for trial.

1. This clause was substituted by S. 45 of the Code of Criminal Procedure (Amendment Act)¹ 1928 (XVIII of 1928).

2. These words were substituted for the words " Local Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. The words " in the case of Assistant Sessions Judges " were omitted by S. 46 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

S. 192.—Where complaint to Joint Magistrate of offences under sections 485 and 486 I.P.C. Joint Magistrate after hearing prosecution finds a *prima facie* case made out only under section 482 he can transfer the case to 2nd class Magistrate for framing a charge under that section. 57 M. 537. It is not permissible for District Magistrate to transfer a case in which there was an objection to the jurisdiction which has been upheld and referred to District Magistrate, 1299 M.W.N. 617 Cr. 99 following, A.I.R. 1938 M. 524.

194 (1) The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any Letters Patent granted under the Indian High Courts Act, 1861,¹ or the Government of India Act, 1915,² [or the Government of India Act, 1937], or any other provision of this Code.

(2) (a) Notwithstanding anything in this Code contained, the Advocate General may, with the previous sanction of the * * * * * the 4 [Provincial Government], exhibit to the High Court, against persons subject to the jurisdiction of the High Court, informations for all purposes for which Her Majesty's Attorney General may exhibit informations on behalf of the Crown in the High Court of Justice in England.

(b) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by Her Majesty's Attorney General so far as the circumstances of the case and the practice and procedure of the said High Court will admit.

(c) All fines, penalties, forfeitures, debts and sums of money recovered or levied under or by virtue of any such information⁵ [shall form part of the revenues of the Province.]

(d) The High Court may make rules for carrying into effect the provisions of this section.

Prosecution for contempt of lawful authority of public servants.

195. 6 [(1) No Court shall take cognizance—

1. These words were inserted by S. 2 and Sch. of the Amending Act, 1916 (XIII of 1916).
2. These words were inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.
3. The words "the Governor General in Council or" were omitted, *ibid*.
4. These words were substituted for the words "Local Government", *ibid*.
5. These words were substituted for the words "shall belong to the Government of India", *ibid*.
6. This sub-section was substituted by S. 47 of the Code of Criminal Procedure (Amendment) Act, 1929 (XVIII of 1929).

S. 194.—An ex-officio information under Sub-section (2) should contain a statement of the charge and details of indictment and information of the executive officers. Charge should conform to section 191; 1938 M.W.N. 409 Cr. 57 (P.C.).

S. 195.—Does not apply to cases of insult to or libel upon the High Court or the Judge thereof 10. I.A. 171. (P.C.) Where attached properties removed from sureties with whom they were left by Amin, complaint of Court is necessary to prosecute under section 379 I.P.C. 1941 M.W.N. 679 Cr. 79. Meaning of "public servant concerned" 1941 M.W.N. 528 Cr. 78. Complaint of court under this section is not necessary to prosecute a person for defamation under section 500 I.P.C. in respect of a statement made by him in the witness box. I.L.R. 1942 M. 158 considering 1931 M.W.N. 193 Cr. 24. 1939 M.W.N. 820 Cr. 44, 59 M. 166, 1940 M.W.N. 867 Cr. 107. 1938 M.W.N. 1263 Cr. 195, 49 M. 728 (F.B.) also (1) Weir 585. Health Officer striking person who had tied his cow at a place where he should not is purported to act in the discharge of his duty and sanction is unnecessary. 1942 M.W.N. 490. Cr. 122. (1) (b) Refusal of Court to prosecute is final and a private complaint is barred. 1937 M.W.N. 1070 Cr. 222. Sanction necessary in respect of dishonest removal of attached properties. 1933 M.W.N. 722 Cr. 110. Where complaint sets forth facts disclosing minor offences and major offence no bar to taking cognizance of major offence for want of complaint by Magistrate. 54 M. 1018. This does not apply merely because defamation is committed in course of a criminal proceeding. 1938 M.W.N. 1263 Cr. 195 *supra*. This section does not apply in case of a defamatory statement in an affidavit not in issue. 1936 M.W.N. 490 Cr. 82.

(a) of any offence punishable under sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate ;

(b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, and 228, with such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.]

(2) In clauses (b) and (c) of sub-section (1) the term "Court" ¹[includes] a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.²

1. This word was substituted for the words "means" by S. 47 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. See now the Indian Registration Act, 1908 (XVI of 1908).

S. 195. Court can take cognisance of offence under section 353 I.P.C. though that offence includes a less serious offence under section 186 which cannot be taken cognisance of except on a complaint. 1934 M.W.N. 921 Cr. 169. Where charges are made under section 193 and 218 I.P.C. as the single act of the accused fell under both the sections a complaint by Court is necessary. 1935 M.W.N. 1344 Cr. 218. Where complaint disclosed offences under sections 182 and 211, offence is strictly under 211 section held not applicable. 59 M. 1083. Evasion of provisions as the sub-section by filing a complaint under another provision by a false statement not allowed as for example filing a complaint under section 500 where offence is one under section 193. 1939 M.W.N. 192. Cr. 24 Also see 1939 M.W.N. 920 Cr. 44. 1940 M.W.N. 392 Cr. 60. 1940 M.W.N. 867 Cr. 107. No complaint by Court is necessary for offences under Ss. 186, 379 or 424 I.P.C. 1939 M.W.N. 896 Cr. 146. Proceedings against an accused under the Legal Practitioner's Act on the ground that the receipt filed was a forgery offence really under section 467 and not under section 193 and no complaint by court is necessary. 1940 M.W.N. 1270 Cr. 181. On a complaint by accused to police charging a person with murder of his wife, further investigation stopped, complainant not appearing in Court. Accused was prosecuted under section 211. Section does not apply as it was not a case in which Magistrate has taken judicial notice. 1933 M.W.N. 873 Cr. 134. A conviction for an offence considered under section 325-B. I.P.C. but is really one under section 186 is illegal as no complaint in writing. 1934 M.W.N. 438 Cr. 88. Where S.I. submitted to the D.S.P. his complaint and D.S.P. sent the same to the District Magistrate, he is said to have made the complaint to the Magistrate who takes it on file. 1934 M.W.N. 1225 Cr. 225. A complaint by S.D.M. of an offence under section 192 to District Magistrate is not a complaint under sub-section (1) (a) 1934 M.W.N. 954 Cr. 179. Where the police filed a complaint under sections 447 and 188 I.P.C. against accused for disobeying S. 144 Order no cognisance could be taken of such a complaint under this section. 1939 M.W.N. 840 Cr. 48. Similarly for disobeying orders under section 145 of this Code. 1934 M.W.N. 483 Cr. 83. Meaning of the words "In relation to any proceeding" 55 M. 611 (F.B.). Where offence is one of fabrication of false evidence to be used in a judicial proceeding, it comes under this section. 55 M. 313. Section applies only to the offence of forging of endorsement on a promissory note by vakils clerk to save limitation. 1939 M.W.N. 917, Cr. 25. Where complaint was filed against a brother in a partition disclosing offences under Ss. 406 and 424 I.P.C. but involving S. 206 as well complaint is necessary. 1934 M.W.N. 694 Cr. 184. Where complaint is that accused fabricated pronotes supporting I.P. filed by him complaint is necessary. 1935 M.W.N. 1000 Cr. 182. Where cattle attached in execution removed by accused from complainant in whose custody Amin left, Complaint is necessary. 1936 M.W.N. 213 Cr. 86.

1[(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Courts is situate ;

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate ; and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.]

2(4) The provisions of sub-section (1), with reference to the offences named therein, apply also to 3[criminal conspiracies to commit such offences and to] the abetment of such offences, and attempts to commit them.

1. This sub-section was substituted for the original sub-sections (7) after it was re-numbered as sub-section (3), by S. 47, of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. The original sub-section (3) was re-numbered (4), *et al.*

3. These words were inserted by S. 4 of the Criminal Law Amendment Act, 1913 (VIII of 1913).

S. 195.—Where false documents fabricated by public servant to be used in criminal proceedings sanction necessary as offence under S. 193 not only under S. 167 ; 1937 M.W.N. 870 Cr. 174. The words "In or in relation to any proceeding" found in sub-section (1) (b) are is not found in sub-section (1) (c) So forging minutes of a Municipal Council in relation to any proceeding requires sanction for prosecution. 1937 M.W.N. 887 Cr. 191. Assistant Registrar of Co-operative Societies is a court within the sub-secs. 1 (b) and (c) 1930 M.W.N. (89 Cr. 145. If offence is committed after close of proceedings no jurisdiction of court to complain under section 476. 55 M. 748. No sanction against abettors of offence enumerated in sub-sec. (1) (c) who are not parties to suit in proceedings. 1931 M.W.N. 1047 Cr. 211. The decision by the Panchayat Court as to forged nature of document in question invokes application of sub-sec. (1) (c) 59 M. 165. A Tahsildar consenting to a transfer of the registry acts as a Court and written complaint is necessary under sub-section (2) 1934 M.W.N. 612 Cr. 116. Joint Deputy Tahsildar disposing of a Dargasth application is not a Revenue Court. 1934 M.W.N. 618 Cr. 122. Court in case of a trial by High Court Judge means the High Court. I.L.R. 1937 M. 612. (3) Under this an appeal lies from an order of the Sub-Magistrate to the District Magistrate and not to the Additional District Magistrate. 1931 M.W.N. 1191 Cr. 263. Panchayat Court is subordinate only to District Court and not to District Munsif's Court. 1913 M.W.N. 1423 Cr. 227. 1932 M.W.N. 218 Cr. 50. Election Commissioner though *persona designata* is a Court under sub-section (2) and is subject to District Court. 56 M. 954. Amin of a Central Nazarat even while executing a decree of the district of the Munsif's Court committed an offence under Sec. 183 I.P.C. is under the charge and direction of the Nazir and subordinate only to the Sub-judge. 1942 M.W.N. 819 Cr. 186. A superior officer cannot delegate the right to file complaint under this section. 1943 M.W.N. 335 Cr. 68. The Court which can make a complaint in respect of offences in relation to proceedings in Village Court is the District Court. 1933 M.W.N. 162, Cr. 27. Guardian suing on behalf of the minor is not a party within the meaning of sub-section 1 (c) 1944 M.W.N. 597 Cr. 183. A single judge of a High Court acting under section 476 is a court subordinate to a Division or Bench of the High Court. I.L.R. 1944 M. 643. Forging of sale deed for the purpose of blackmail if a complaint is made against writer and attesters of such documents offence under section 193 and so not an evasion to this section. No conflict between 57 M. 682, 55 M. 343 and 59 M. 165, 1915 M.W.N. 266 Cr. 54. A false complaint to the police on which the police filed a charge sheet resulting in discharge of accused was committed in relation to proceedings of court and a written complaint is necessary. 1941 M.W.N. 425 Cr. 77. Complaint given to V. M. is tantamount to sending information to the police through him under this section. 1942 M.W.N. 217 Cr. 49. Except when trying suits under Rs. 20. Registrar or Small Causes, Madras is not a Court. I.L.R. 1943 M. 603. 1942 M.W.N. 126 Cr. 80. Where facts disclose offence under S. 193, 471 I.P.C. complainant shall not lie under this section by filing complaints under S. 467. 1946 M.W.N. Cr. 45; I.L.R. 1946 Mad. 891.

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2[(5) When a complaint has been made under sub-section (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.]

3 196. No Court shall take cognizance of any offence punishable under Chapter VI 4[or IXA] of the Indian Penal Code (except section 127), or punishable under section 108A, or section 153A, or section 294A, 5[or section 295A] or section 505 of the same Code, unless upon complaint made by order of, or under authority from, 6[the Provincial Government or some officer empowered by the Provincial Government] in this behalf.

Prosecution for
certain clauses of
criminal conspiracy

7[196A. No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Indian Penal Code,

- (1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless upon complaint made by order or under authority from 8[the Provincial Government or some officer empowered by the Provincial Government] in this behalf, or
- (2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, unless the 8[Provincial Government] or a Chief Presidency Magistrate or District Magistrate empowered in

1. Original sub-sections (4), (5) and (6) were omitted by S. 17 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. This sub-section was inserted, *ibid.*

3. This sub-section has been amended in the Punjab and the Central Provinces by Punjab Act I of 1936 and C.P. Act XIX of 1936, respectively.

4. This word, figures and letter were inserted by S. 3 of the Indian Elections Offences and Inquiries Act, 1920 (XXXIX of 1920).

5. These words, figures and letter were inserted by S. 3 of the Criminal Law Amendment Act 1927 (XXV of 1927).

6. These words were substituted for the words "the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

7. Section 196A was inserted by S. 5 of the Criminal Laws Amendment Act, 1918 (VIII of 1918).

8. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 196-A.—No sanction is necessary in case of conspiracy to commit a breach of trust of moneys of a Bank though forgery and destruction of records under sections 467 and 477 L.P.C. are committed to conceal the main offence. 57 M. 515. Where charge is against a V.M. of conspiracy to send a false report sanction is necessary under this section as the offence is one of conspiracy to file a false case. 1935 M.W.N. 650 Cr. 114. A trial for conspiracy to forge valuable security is illegal without the sanction and vitiates the trial even if other offence is also included in the charge. 1936 M.W.N. 795 Cr. 134. Whether prior sanction is necessary for conviction under section 120 B alone in spite of offences having been committed in pursuance of conspiracy is left open. 1937 M.W.N. 986 Cr. 212. This does not apply to prosecutions under Section 120-B L.P.C. read with Rule 90-B of D.O.I. Rules. 1945 M.W.N. 557, Cr. 105.

this behalf by the 1[Provincial Government], has, by order in writing, consented to the initiation of the proceedings :

Provided that where the criminal conspiracy is one to which the provisions of sub-section 2 [(4)] of section 195 apply no such consent shall be necessary.]

8[196B. In the case of any offence in respect of which the provisions of section 196 or section 196A apply, a District Magistrate or Chief Presidency Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police-officer not being below the rank of Inspector, in which case such police-officer shall have the powers referred to in section 155, sub-section (3).]

Preliminary inquiry in certain cases.

197. 4[(1) When any person who is a Judge within the meaning of section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a 5[Provincial Government] or some higher authority, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the 6[previous sanction—

Prosecution of Judges and public servants.

(a) in the case of a person employed in connection with the affairs of the Federation, of the Governor General exercising his individual judgment and

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. This figure and bracket to be substituted for the figure and brackets "(3)" by S. 48 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

3. Section 196-B was inserted by S. 49 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

4. This sub-section was substituted by S. 50, *ibid.*

5. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

6. These words were substituted for the words "previous sanction of the Local Government", *ibid.*

S. 197.—A Village Magistrate makes a false complaint to the police; this section does not apply. 1935 M.W.N. 586 Cr. 98. Sanction necessary in 2 case of a District Election Officer removing names from electoral roll. 1937 M.W.N. 740 Cr. 164. In case of an assault by a President of a Panchayat Court sanction for prosecution is necessary. 1939 M.W.N. 741 Cr. 105. Also in a prosecution for criminal breach of trust. 1937 M.W.N. 216 Cr. 48. The expression public servant not removable save by or with the sanction of Local Government, will not include public servants removable by subordinate authority. 58 M. 787, overruling 1934 M.W.N. 370 Cr. 58. A Village headman reporting alleged crime and prosecuted for defamation no sanction is necessary. 1938 M.W.N. 1031 Cr. 171 also 1936 M.W.N. 215 Cr. 39 But see 1932 M.W.N. 65 Cr. 1. Similarly in the case of warrant officer of a Municipality 1936 M.W.N. 1877 Cr. 237. Karnam acting as a village magistrate charged for receiving stolen property no sanction is necessary. 1933 M.W.N. 1075 Cr. 215. Village Munsif reporting in his personal capacity about theft of revenue collections in his house charged under section 182 I.P.C., no sanction is necessary. 1933 M.W.N. 876 Cr. 188. Objection to want of sanction should be taken at the beginning of the proceedings and not when charge is framed. 1934 M.W.N. 522 Cr. 93. Acts done by a Sub Magistrate going to the spot sanction is necessary in the case of acts done there. 1935 M.W.N. 590 Cr. 101. Where a report of theft was made by a Y. M. it is not necessarily sent in his capacity as village magistrate and no sanction is necessary if the report is false. 1935 M.W.N. 950 Cr. 166. Also 1937 M.W.N. 698 Cr. 143. Sanction necessary to prosecute a President of Village Panchayat Court for making false entries in despatch register. 1935 M.W.N. 1196 Cr. 212. Tests to determine necessity for sanction: 1939 M.W.N. 497 Cr. 69 (F.C.) Magistrate must decide the plea of want of sanction before starting the case 1933 M.W.N. 1425 Cr. 229. Protection under this section does not apply to public officers and must be interpreted in the light of administrative practice and limited to such interpretation. 1948 M.W.N. 815 Cr. 49 (F.C.) A certificate by the Secretary to Government of sanction by His Excellency is sufficient proof of such sanction. 1.L.R. 1945 Mad. 219.

(b) in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province exercising his individual judgment.].]

(2) ¹[The Governor General or Governor, as the case may be, exercising his individual judgment] may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, ²[Magistrate] or public servant is to be conducted, and may specify the Court before which the trial is to be held.

³[(3) In relation to the period elapsing between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation, the references in this section to the Federation and to the Governor General exercising his individual judgment shall be construed as references to the Governor General in Council.]

198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence:

⁴[Provided that, where the person so aggrieved is woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf.]

⁵[Provided further that where the husband aggrieved by an offence under S. 194, Indian Penal Code is serving in His Majesty's armed forces under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (1) of Section 199-B may, with the leave of the Court, make a complaint on his behalf.]

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, ⁶[made with the leave of the Court] by some person who had care of such woman on his behalf at the time when such offence was committed:

⁷[Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a

1. These words were substituted for the words "Such Government", by the Government of India (Adaptation of Indian Laws), Order, 1937.

2. This word was inserted by S. 50 of the Code of Criminal Procedure (Amendment) Act, 1929 (XVIII of 1929).

3. This sub-section was inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. This proviso was added by S. 51 of the Code of Criminal Procedure (Amendment) Act, 1929 (XVIII of 1929).

5. This proviso was added by Act XXVIII of 1943.

6. These words were inserted by S. 52 of the Code of Criminal Procedure (Amendment) Act 1929 (XVIII of 1929).

7. This proviso was added, *ibid.*

complaint, some other person may, with the leave of the Court, make a complaint on his behalf.]

1[199A. When in any case falling under section 198 or section 199, the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall be given to such guardian, and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof.]

2[Provided further that where such husband is serving in any of His Majesty's armed forces under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, and where for any reason no complaint has been made by a person having care of the woman as aforesaid, some other person authorised by the husband in accordance with the provisions of sub-section (1) of Section 199B may, with the leave of the Court, make a complaint on his behalf.]

3199B. (1) The authorisation of a husband given to another person to make a complaint on his behalf under the second proviso to section 198 or the second proviso to section 199 shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by the Officer referred to in the said provisos, and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being granted to the husband.

(2) Any document purporting to be such an authorisation and complying with the provisions of sub-section (1) and any document purporting to be a certificate required by that sub-section, shall, unless the contrary is proved, be presumed to be genuine, and shall be received in evidence.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

200. * * * A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate :

Provided as follows :—

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192 ;

1. Section was added by Act, XVIII of 1928.
2. This proviso was added by Act XVIII of 1948.
3. This section was added by Act, XXVIII of 1948.
4. The words and figures "Subject to the provisions of section 476" were omitted by S. 54, Act XVIII of 1928.

5. 200.—Magistrates mentioned in section 190 are entitled to take cognizance of non-cognisable offence upon a report made in writing by a police officer. 49 M. 526 (F.B.)

1[(aa) when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties ;]

(b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and 2[where the complaint is made in writing] need not be reduced to writing ; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing ;

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Procedure by Magistrate not competent to take cognizance of the case.

201. (1) If the complaint has been made in writing of a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

202. 3[(1) Any Magistrate, on receipt of a complaint of an offence to which he is authorised to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint :

4[Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200.]

5[(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.]

1. This proviso was inserted by S. 51 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. These words were inserted by S. 3 of the Code of Criminal Procedure (Amendment) Act, 1926 (II of 1926).

3. This sub-section was substituted by S. 55 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

4. This proviso was substituted by S. 4 of the Code of Criminal Procedure (Amendment) Act, 1926 (II of 1926).

5. This sub-section was substituted by S. 55 of Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

S. 202.—A report to the police under this section is part of the record and copies thereof should be granted to the accused, 1931 M.W.N. 825 Cr. 61.

¹[(2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.]

(3) This section applies also to the police in the towns of Calcutta and Bombay.

203 The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if ²[after considering the statement on oath (if any) of the complainant and the result of ³[the investigation] or inquiry ⁴[(if any)] under section 202]; there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing.

Dismissal of Complaint

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

204. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

Issue of process.

(2) Nothing in this section shall be deemed to affect the provisions of section 90.

(3) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

205. (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

Magistrate may dispense with personal attendance of accused.

1. This sub-section was added, by Act XVIII of 1923.

2. These words were substituted for the words "after examining the complainant and considering the result of the investigation (if any) made under section 202" by S. 56, *ibid.*

3. These words were substituted for the words "any investigation" by S. 5 of the Code of Criminal Procedure (Amendment) Act, 1926 (II of 1926).

4. These words and brackets were inserted, *ibid.*

S. 203.—Dismissal of previous complaint is no bar to fresh complaint but the question for consideration is whether or not it is abuse of process of Court to entertain fresh complaint. 1945 M.W.N. 789, Cr. 144. 1981 M.W.N. 1149 Cr. 237 (F.B.) following I.L.R. 29 Mad. 126 (F.B.).

S. 204.—Though complainant can give information of the commission of an offence he has witnessed, he must give Magistrate reasonable ground for taking action under this section. 1936, M.W.N. 528 Cr. 96. Complainant cannot be compelled to pay process fees for attendance of witnesses though accused wanted for further cross examination and the complaint cannot be dismissed for failure. 1938 M.W.N. 1266 Cr. 198. But Magistrate has power to dismiss the complaint under sub-section (3) in a summons case for non-payment of batta I.L.R. 1937 M. 515.

S. 205.—Magistrate is not entitled to insist on the appearance of the petitioner before dealing with the application itself. 1937 M.W.N. 696 Cr. 186. Sessions Judge has power to dispense attendance of accused at Sessions trial. Such power may be exercised in the case of a Goshia lady at least till she is convicted 45 Mad. 559.

(2) But the Magistrate, inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

206. (1) 1 * * * Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, or any Magistrate ²[(not being a Magistrate of the third class)] empowered in this behalf by the ³[Provincial Government], may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

Power to commit for trial.

(2) But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

Procedure in inquiries preparatory to commitment.

208. (1) The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

Taking of evidence produced.

(2) The accused shall be at liberty to cross-examine the witnesses for the prosecution, and in such case the prosecutor may re-examine them.

(3) If the complainant or officer conducting the prosecution or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

Process for production of further evidence.

(4) Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

1. The words and figures "Subject to the provisions of section 443", were omitted by S. 9 of the Criminal Law Amendment Act, 1928 (XII of 1928).

2. These words and brackets were inserted by S. 57 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

3. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 206.—Counter-case triable as a P. R. Case is not sufficient to treat case also as a P.R.C. where it is triable by a first class magistrate. 1983. M.W.N. 560 Cr. 98. 1984 M.W.N. 272; Cr. 86; 1940 M.W.N. 580; Cr. 70.

S. 208.—In two cases arising out of same transaction inquiry as in two cases not necessary 1985 M.W.N. 645 Cr. 109. In private complaint for murder the complainant gave up some of the P. W. S and withdraws case the Court shall proceed with the enquiry either discharging the accused or examining the rest of the P.Ws. per the Prosecuting Inspector 1987 M.W.N. 991 Cr. 507.

209. (1) When the evidence referred to in section 208, sub-sections (1) and (3), has been taken, and he has (if necessary) examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

210. (1) When upon such evidence being taken and such examination (if any) being made, the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

(2) As soon as ¹[such charge] has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

211. (1) The accused shall be required at once to give in orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

(2) The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

212. The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

213. (1) When the accused, on being required to give in a list under section 211, has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be) and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

(2) If the Magistrate, after hearing the witnesses for the defence, is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused.

1. These words were substituted for the words "the charge" by S. 53 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

S. 209.—Duty of magistrate to sift evidence and see whether it is reasonably clear that accused stand a chance of being convicted if they are committed. 1934 M.W.N. 891. Cr. 163 1931 M.W.N. 116 Cr. 12 also 1938 M.W.N. 819 Cr. 185. Important to prevent false and frivolous case being committed 1937 M.W.N. 324 Cr 52. Court is entitled to put questions to accused under the section and accused not entitled to file written statement 1940 M.W.N. 1163 Cr. 165. There is no warrant under the section for questions being put to accused when prosecution has not proved the case 1940 M.W.N. 1106 ; Cr. 149.

214. [*Person charged outside presidency-towns jointly with European British subject.*] *Repealed by S. 10 of Act XII of 1923.*

215. A commitment once made under section 213 1 * * * by a competent Magistrate 2 * * * or by a Civil or Revenue Court under section 478, can be quashed by the High Court only, and only on a point of law.

Quashing commitments under section 213.

216. When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list, as have not appeared before himself, to appear before the Court to which the accused has been committed;

Summons to witnesses for defence when accused is committed.

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Provided, also, that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

Refusal to summon unnecessary witness unless deposit made.

217. (1) Complainants and witnesses for the prosecution and defence whose attendance before the Court of Session or High Court is necessary and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court to prosecute or to give evidence, as the case may be.

Bond of complainants and witnesses.

(2) If any complainant or witness refuses to attend before the Court of Session or High Court, or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

218. (1) When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the 3 [Provincial Government] in this behalf, notifying the commitment, and stating the offence in the same form as

Commitment when to be notified.

1. The words and figures "or section 214" were omitted by S. 11 of the Criminal Law Amendment Act, 1923 (XII of 1913).

2. The words and figures "or by a Court of Session under section 477" were omitted by S. 59 of the Code of Criminal Procedure (Amendment) Act, 1913 (XVIII of 1913).

3. Those words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 215.—Quashing commitment shall only be on a point of law i.e., an error of law in the commitment proceedings. 1938 M.W.N. 577 Cr. 97. Section does not apply where commitment has been made under the directions of High Court under S. 526 of this Code. An order of Sessions Judge under S. 497 may be quashed by High Court not under this section 27 Mad. 54. Section modifies the general provisions of Cr. 15 of Letters Patent 43 Mad. 361.

the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge ;

and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by this High Court.

Charge, etc., to be forwarded to High Court or Court of Session.

English translation to be forwarded to High Court.

(2) When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

219. (1) ¹ [The committing Magistrate or, in the absence of such Magistrate, any other Magistrate empowered by or under section 206] may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Power to summon supplementary witnesses.

(2) Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall ² [be given to the accused free of cost],

220. Until and during the trial, the Magistrate shall subject to the provisions of this Code regarding the taking of bail, commit the accused by warrant, to custody.

Custody of accused pending trial.

CHAPTER XIX.

OF THE CHARGE.

Form of Charge.

221. (1) Every charge under this Code shall state the offence with which the accused is charged.

Charge to state offence.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

Specific name of offence sufficient description.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

How stated where offence has no specific name.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

What implied in charge.

(6) In the presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

Language of charge.

1. These words were substituted for the words "The Magistrate" by S. 60 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. These words were substituted for the words "if the accused so require, be given to him free of cost", *ibid*.

(7) If the accused¹ [having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence,] the fact, date and place of the previous conviction shall be stated in the charge. If such statement² [has been omitted], the Court may add it at any time before sentence is passed.

Illustrations.

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception I one or other of the three provisos to that exception apply to it.

(b) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, theft or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the section under which the offence is punishable must, in each instance, be referred in the charge.

(d) A is charged, under section 184 of the Indian Penal Code with intentionally obstructing a sale of property offered for sale by the lawful authority of a public-servant. The charge should be in those words.

222. (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234:

Provided that the time included between the first and last of such dates shall not exceed one year.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

When manner of committing offence must be stated,

1. Those words were substituted for the words "has been previously convicted of any offence, it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award" by S. 61 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. Those words were substituted for the words "is omitted", *ibid.*

S. 222 (2) Enabling provision permitting charges joined together for large no of separate charges for the purpose of convenience the purpose of convenience 1930 M.W.N. 1097; Cr. 241. Karnam misappropriating various items between a period of 6 months and convicted in respect of 5 items charges as they arise out of one obligation are covered by this section. 1936 M.W.N. 1134 Cr. 301. Section does not apply to Criminal breach of trust or misappropriation of goods 1939 M.W.N. 468 Cr. 64.

Illustrations.

(a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to give B from punishment. The charge must set out the disobedience charged and the law infringed.

Words in charge taken in sense of law under which offence is punishable.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the

Effect of errors.

offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact

misled by such error or omission, and it has occasioned a failure of justice.

Illustrations.

(a) A is charged under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error.

(d) A is charged with the murder of Khoda Baksh on the 21st January 1881. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 10th January 1881. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(e) A was charged with murdering Haidar Baksh on the 10th January 1881, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January 1881. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

226. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

Procedure on commitment without charge or with imperfect charge.

S. 225.—Error in charge with respect to weapons used by several accused not material and not occasioning failure of justice, 1937 M.W.N. 1831 Cr. 276.

S. 226.—Does not authorise framing of additional charge when the original charge is neither erroneous nor imperfect, 1933 M.W.N. 1163 Cr. 286.

Illustrations.

1. A is charged with the murder of C. A charge of abetting the murder of C may be added or substituted.

2. A is charged with forging a valuable security, under section 467 of the Indian Penal Code. A charge of fabricating false evidence under section 193 may be added.

3. A is charged with receiving stolen property knowing it to be stolen. During the trial it incidentally appears that he has in his possession instruments for the purpose of counterfeiting coin. A charge under section 235 of the Indian Penal Code cannot be added.

227. (1) Any Court may alter or add to any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

Court may alter charge.

(2) Every such alteration or addition shall be read and explained to the accused.

228. If the charge framed or alteration or addition made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration or addition has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

When trial may proceed immediately after alteration.

229. If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

When new trial may be directed, or trial suspended.

230. If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Stay of proceedings if prosecution of offence in altered charge requires previous sanction.

231. Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to re-call or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material.

Recall of witnesses when charge altered.

232. (1) If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

Effect of material error.

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence, under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but, if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Joinder of charges.

233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

Separate charges for distinct offences.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

234. (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences,¹ [whether in respect of the same person or not] he may be charged with, and tried at one trial for, any number of them not exceeding three.

Three offences of same kind within year may be charged together.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law:

²[Provided that, for the purpose of this section, an offence punishable under section 379 of the Indian Penal Code shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the Indian Penal Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.]

See Rule 156, Criminal Rules of Practice.

235 (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

Trial for more than one offence.

1. These words were inserted by S. 61 of the Code of Criminal Procedure (Amendment) Act, 1938 (XVIII of 1938).

2. This proviso was added *ibid.*

S. 233.—Single trial in respect of attempt or abetment of bribery on 6 counts on different dates with different persons and with false personation relating to different persons at different times is bad. 1937 M.W.N. 209 Cr. 41. Trial of 2 distinct offences of theft in 2 houses with alternative charges under S. 411 I.P.C. in respect of each. 1940 M.W.N. 239 Cr. 30. Accused charged with 2 offences under S. 379; trial of accused under S. 414 and S. 379. for same illegal 1935 M.W.N. 652; Cr. 116. Misjoinder of charges vitiating cannot be cured by reversing conviction under some of the charges 1936 M.W.N. 828 Cr. 152. Charging a person under S. 380 and under S. 411 I.P.C. is misjoinder 1942 M.W.N. 726 Cr. 166.

S. 234.—See Rule 156 Cr. R.P. Joint trial of charges under S. 408 and under S. 477 A I.P.C. in respect of one item is illegal 1936 M.W.N. 1129 Cr. 197. Cheating by inducing to part with money in 5 instalments involves no misjoinder 1935 M.W.N. 1225; Cr. 218. where indictment consisted of 41 acts extending over 2 yrs. it offends the section 25 M. 61 (P.O.) but where accused charged under S. 120-B read with 409 I.P.C. with various acts of criminal breach of trust and forgery over 2 yrs. the trial is not vitiated. 1938 M.W.N. 528 Cr. 77. See also 57 Mad. 545. Joint trial containing a large no of charges deprecated 1940 M.W.N. 97 Cr. 17. Charge of theft incidental to rioting may be tried together with rioting. 1942 M.W.N. 723 Cr. 163.

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

Offence falling within two definitions.

(3) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

Acts constituting one offence, but constituting when combined a different offence.

(4) Nothing contained in this section shall affect the Indian Penal Code, section 71.

Illustrations.

to sub-section (1)--

(a) A rescues B, a person in lawful custody and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sections 235 and 333 of the Indian Penal Code.

(b) A commits house-breaking by day with intent to commit adultery, and commits in the house so entered adultery with B's wife. A may be separately charged with, and convicted of, offences under section 451 and 497 of the Indian Penal Code.

(c) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code.

(d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

(e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charges. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.

(f) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.

(g) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code.

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.

The separate charges referred to in Illustrations (a) to (h) respectively may be tried at the same time.

to sub-section (2)

(i) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.

(j) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.

S. 235.—The Court must decide on the matter before it, about joint trial or otherwise. 1937 M. W. N. 463 Cr 95. Offences under S. 302 and S. 211 I. P. C. are not to be tried jointly 1938 M. W. N. 1110 Cr 196 but under Ss. 302 and 307 can be tried jointly 1931 M. W. N. 267 Cr. 51 offences under S. 351 and S. 430 I. P. C. cannot form a single transaction. 1935 M. W. N. 1286 Cr. 980. So also under Ss. 406 and 474 I. P. C. 1939 M. W. N. 326; Cr. 54 Use of 4 forged documents during registration of sale deed and obtaining balance of price they all form one transaction 1940 M. W. N. 865 Cr. 105.

(k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 17 and 301 of the Indian Penal Code.

(l) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under sections 171 (read with 160) and 190 of the same Code.

to sub-section (3)—

(m) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 394 and 391 of the Indian Penal Code.

236. Is a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Where it is doubtful what offence has been committed.

Illustrations.

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

237. (1) If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

When a person is charged with one offence he can be convicted of another.

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Illustration.

A is charged with theft. It appears that she committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

238. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

When offence proved included in offence charged.

1. Sub-section (2) was omitted by S. 63 of the Code of Criminal Procedure (Amendment) Act 1928 (XVIII of 1928).

S. 236.—Illustration (b) See 1932 M.W.N. Cr. 160; 55 M. 536. Not permissible to charge with murder and at the same time with constructive liability 1936 M. W. N. 525 Cr. 93. Section cannot be invoked when there is no doubt and where different sets of facts have to be proved in respect of the charges 1937 M. W. N. 871 Cr. 175.

S. 237.—Accused charged with causing grievous hurt and found guilty of affray conviction bad. True test is whether accused had notice of latter offence 1938 M. W. N. 718 Cr. 106. Accused charged under S. 302 can be convicted under S. 201 1937 M. W. N. 544 Cr. 104. following 1925 M. W. N. 418 (P. O.). But accused must have opportunity of meeting it 1937 M. W. N. 977 Cr. 193. Charged under S. 393 cannot be convicted under S. 183, 1932 M. W. N. 247 Cr. 39. Charged under theft conviction under abetment alone in absence of notice is bad 1932 M. W. N. 1216 Cr. 245 also 1936 M.W.N. 899 Cr. 168 charge under S. 326 and conviction under S. 149. not necessarily bad, if accused is not materially prejudiced, 47 M. 746 (F. B.)

(2) *When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.*

1[(2A) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.]

(3) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(a) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 in respect of the property but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(b) A is charged, under section 325 of the Indian Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

What persons
may be charged
jointly.

2[239. The following persons may be charged and tried together, namely:—

- (a) persons accused of the same offence committed in the course of the same transaction ;
- (b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence ;
- (c) persons accused of more than one offence of the same kind, within the meaning of section 234 committed by them jointly within the period of twelve months ;
- (d) persons accused of different offences committed in the course of the same transaction ;
- (e) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence ;
- (f) persons accused of offences under sections 411 and 414 of the Indian Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence ; and
- (g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence ;

and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.]

1. This sub-section was inserted by s. 64 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. Section 239 was substituted by s. 65, *ibid.*

240. When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons cases.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases.

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as fully as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

244. (1) [If the Magistrate does not convict the accused under the preceding section or] if the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence:

[Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court].

1. These words were substituted for the words "shall convict" by S. 66 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. These words were inserted by S. 67, *ibid.*

3. This proviso was added, *ibid.*

S. 239.—Five accused tried for cultivating different portion of Reserve forest trial illegal 1936 M.W.N. 1095 Cr. 195. Drivers of two buses in a collision the subject matter of offence can be tried together 1931 M.W.N. 556 Cr. 109. Where offences of same kind are committed by a set of persons on different dates they can be tried together 1909 M.W.N. 1258 Cr. 197. Where accused were charged under S. 148 and for constructive liability for various offences and it was found there was no common object trial on the various counts illegal 1939 M.W.N. 117 Cr. 5. Scope of Section (d) 1938 M.W.N. 535 Cr. 81. (P.C.) Where no of persons charged with cutting trees in different parts of forest there is mis-joinder Prejudice presumed I.L.R. 1942 Mad. 322.

S. 241.—Where warrant procedure is prescribed under which accused is charge sheeted summary procedure is not illegal if accused is not previously judged 1934 M.W.N. 407 Cr. 80.

S. 242.—Where Magistrate finds on complaint serious offences calling for warrant case procedure trial under S. 252 not illegal merely because Summons issued under Summons Case procedure 1937 M.W.N. 951. I.L.R. 1938 Mad. 343.

S. 243.—Where accused's plea is one of admission of facts but denial of responsibility conviction illegal without further evidence 1934 M.W.N. 1361 Cr. 257. Where admission is under misapprehension, conviction illegal 1941 M.W.N. 447 Cr. 42.

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue 1[a summons to any witness directing him to attend or to produce] any document or other thing.

(3) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

245. (1) If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

2[(2) Where the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law].

Sentence.

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this Chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

Finding not limited by complaint or summons

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day :

Non-appearance of complainant.

Provided that, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case.

248. If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Withdrawal of complaint.

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or with the previous sanction of the District Magistrate, any other Magistrate, may for reasons to be recorded by him, stop the proceedings when no complaint.

Power to stop proceedings when no complaint.

1. These words were substituted for the words "process to compel the attendance of any witness or the production of," by S. 67 of Act XVIII of 1923.

2. This sub-section was substituted by S. 68, *ibid*.

S. 245.—Acquittal without examining complainant and witnesses illegal 1981 M.W.N. 1060 Cr. 214.

S. 246.—Magistrate taking cognizance of a Summons Case cannot convict accused of offence triable as a Warrant Case, 59 Mad. 442.

S. 247.—Acquittal of accused, even if he also be absent, on the complaint's non-appearance is valid. 1932 M.W.N. 647 Cr. 127; but not if complainant is absent only on the day of judgment, 1933 M.W.N. 1271 Cr. 203. If complainant be dead pending enquiry accused should be acquitted fresh complaint by complainant's son not entertainable. 51 M. 839. Second complaint on the acquittal of accused under this section not maintainable 1942 M.W.N. 601. Cr. 145.

S. 248.—Withdrawal of complaint against one or more does not amount to withdrawal against all the accused 1940 M.W.N. 104 Cr. 24. Also 41 M. 323.

proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

Frivolous Accusations in Summons and Warrant Cases.

250. 1[(1) If in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid.]

1 [(2) The Magistrate shall record and consider any cause which such complainant or informant may show and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding one hundred rupees or, if the Magistrate is a Magistrate of the third class, not exceeding fifty rupees, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.]

1[(2A) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.]

1[(2B) When any person is imprisoned under sub-section (2A), the provisions of sections 68 and 69 of the Indian Penal Code shall, so far as may be, apply.]

1[(2C) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:]

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.]

I. Sub-sections (1) (2) (2A), (2B) and (2C) were substituted by S. 69 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

S. 250.—Where offence is triable by Court of Session, magistrate not competent to award compensation 1987 M.W.N. 96 Cr. 24. Compensation cannot be ordered to accused not mentioned in complaint but added by Police on investigation 1935 M.W.N. 1057 Cr. 185. See also 1911 M.W.N. 61 Cr. 5. Compensation may be ordered to accused on false information to Adhikari 1915 M.W.N. 81 Cr. 17 also 31 M. 259 (F.B.); 30 M. 1006 when all P.W.s are not examined, compensation should not be ordered. 1938 M.W.N. 900 Cr. 144 also 44 M. 51; 51 M. 337; 1934 M.W.N. 598 Cr. 99; 1935 M.W.N. 1088 Cr. 181 Complainant not to be ordered pay compensation unless he had full chance to prove his case 1934 M.W.N. 402 Cr. 75. In case of equal conflicting judgments of a Bench Court compensation cannot be ordered 1938 M.W.N. 1259 Cr. 190. Reasons to be recorded for awarding compensation, 1930 M.W.N. 1047 Cr. 239 see also A.I.R. 1942 Mad. 241. Magistrate not to pay T.A. or batta to complainant in case of dismissal under this section vide Cr.R.P. R. 391.

(3) A complainant or informant who has been ordered under 1[sub-section (2)] by a Magistrate of the second or third class to pay compensation ² [or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees] may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided ³[and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order].

* * * * *

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

252. (1) When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution :

^b [Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.]

(2) The Magistrate shall ascertain, from the complainant or otherwise the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself each of them as he thinks necessary.

253. (1) If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if un rebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

1. This word and figure were substituted for the word and figure " sub-section (1) ", by S. 69 of Act XVIII of 1923.

2. These words were substituted for the words " to an accused person , *sed.*

3. These words were added, *ibid.*

4. Sub-section (5) was omitted by S. 69 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

5. This proviso was added by S. 70, *ibid.*

S. 252.—Recording evidence as in a summons case and framing charge thereon is illegal 1934 M. W. N. 951 (r 177. Under sub-section (2) it is open to the magistrate to take such evidence as is necessary in spite of complainant not proceeding with the case. 1937 M. W. N. 727 Cr 151. Effect of this section is to throw great responsibility on magistrate in summoning witnesses than in a Summons Case. 49 Mad. 978 Trial of a warrant Case as a Summons Case and conviction on accused's own admission without taking evidence and framing charge illegal 29 Mad. 373.

S. 253.—' Groundless ' in Section means that the evidence must be such that no conviction can be rested on it 1929 M. W. N. Cr. 13 Magistrate must ascertain from the complainant the nature of evidence to be let in 51 Mad. 185.

254. If, when such evidence and examination have been taken and charge to be made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

255. (1) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty, the Magistrate shall record the plea and may in his discretion convict him thereon.

1 [255A. In a case where a previous conviction is charged under the provisions of section 221, sub-section (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under section 255, sub-section (2), or section 258, take evidence in respect of the alleged previous conviction, and shall record a finding thereon.]

256. (1) If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state, ²[at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith], whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and, after cross-examination and re-examination (if any), they also shall be discharged. The accused shall then be called upon to enter upon his defence and produce his evidence.

(2) If the accused puts in any written statement, the Magistrate shall file it with the record.

257. (1) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process

1. Section 255-A was inserted by S. 71 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. These words were inserted by S. 72 *ibid.*

S. 254.—In a case where it was found that facts constituted only a Summons Case magistrate can proceed without framing a charge 1931 M.W.N. 1319 Cr. 279.

S. 255.—Conviction based upon co-accused pleading guilty for another is illegal 1934 M.W.N. 272 Cr. 56.

S. 256.—Reasons must be recorded why magistrate has not adjourned the hearing to another date, 1930 M.W.N. 985 Cr. 225. Failure to comply with provisions of the Section vitiates trial 1932 M.W.N. 857 Cr. 181. 50 M. 740. When accused called upon to enter defence without further cross examination and no reasons recorded trial is illegal. 1935 M.W.N. 1058 Cr. 186. Prosecution is not closed until defence begins and not on framing of charge. So 'remaining witnesses for prosecution' includes any witness prosecution wishes to examine 1943, 2 M.L.J. 872. Accused should not be required to pay the expenses of P.W. whose attendance is required for cross examination 1935 M.W.N. 647 Cr. 111. Waiver by Counsel of right of recalling prosecution witness for further cross-examination cannot prejudice accused 49 M. 411.

unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing.

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purposes of justice.

(2) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

258. (1) If in any case under this Chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

¹ [(2) Where in any case under this Chapter the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.]

259. When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded, ²[or is not a cognizable offence,] the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed discharge the accused.

CHAPTER XXII.

OF SUMMARY TRIALS.

260. (1) Notwithstanding anything contained in this Code,—

(a) the District Magistrate,

¹ This sub-section was substituted by S. 73 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

² These words were inserted by S. 74, *ibid.*

S. 257.—Where magistrate refused to compel attendance of defence witness and adjourn case accused prejudiced 1932 M.W.N. 1349, Cr. 273. Where P.W.s. are cited for the defence magistrate refusing cross-examination of such witnesses illegal 1935 M.W.N. 957 Cr. 173. Magistrate not bound to examine witness present in Court but not summoned by defence under S. 540 1934 M.W.N. 97 Cr. 25. Magistrate cannot direct deposit by accused of lump sum for costs of defence witnesses 1936 M.W.N. 1093 Cr. 193.

S. 258.—Order acquitting accused after charge was framed for default of complainant illegal 1942 M.W.N. 444 Cr. 120.

S. 259.—Magistrate has no power to set aside his own order of discharge where trial has not been held but can entertain another complaint 1939 M.W.N. 1429 Cr. 237 also 1936 M.W.N. 753 Cr. 143. Discharge of accused on transfer and after framing of charge by first Court is bar to fresh complaint. 1940 M.W.N. 961 Cr. 126. Private complaint does not abate on death of complainant after charge is framed 1941 M.W.N. 1384 Cr. 236; 54 Mad. 768. Complainant can file fresh complaint after discharge of accused under this section 1942 M.W.N. 755 Cr. 127.

S. 260.—Offences under S. 349 I.P.C. not to be tried summarily. 1939 M.W.N. 478 Cr. 95. Whether a hotly contested case is a fit case to be tried summarily; 1931 M.W.N. 118 Cr. 14.

- (b) any Magistrate of the first class specially empowered in this behalf by the 1[Provincial Government], and
- (c) any Bench of Magistrates invested with the powers of a Magistrate of the first class and especially empowered in this behalf by the 1[Provincial Government],

may, if he or they think fit, try in a summary way all or any of the following offences:—

- (a) offences not punishable with death, transportation or imprisonment for a term exceeding six months;
- (b) offences relating to weights and measures under sections 264, 265 and 266 of the Indian Penal Code;
- (c) hurt, under section 323 of the same Code;
- (d) theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;
- (e) dishonest misappropriation of property under section 408 of the same Code, where the value of the property misappropriated does not exceed fifty rupees;
- (f) receiving or retaining stolen property under section 411 of the same Code, where the value of such property does not exceed fifty rupees;
- (g) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees;
- (h) mischief, under section 427 of the same Code;
- (i) house-trespass, under section 448, and offences under sections 451, 2[453, 454], 456 and 457 of the same Code;
- (j) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code;
- (k) abetment of any of the foregoing offences;
- (l) an attempt to commit any of the foregoing offences, when such attempt is an offence;
- (m) offences under section 20 of the Cattle-trespass Act, 1871:

Provided that no case in which a Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

(2) When in the course of a summary trial it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined and proceed to re-hear the case in manner provided by this Code.

See Criminal Rules of Practice Rule 184.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These figures were inserted by S. 3 of the Repealing and Amending Act, 1938 (I of the 1938), see Part II of the Second Schedule.

Power to invest
Bench of Magist-
rates invested with
less power.

261. The ¹[Provincial Government] may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences :—

- (a) offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 420, ²[447 and 504] ;
- (b) offences against Municipal Acts, and the conservancy clauses of Police Acts which are punishable only with fine or with imprisonment for a term not exceeding one month ³[with or without fine] ;
- (c) abetment of any of the foregoing offences ;
- (d) an attempt to commit any of the foregoing offences, when such attempt is an offence.

262. (1) In trials under this Chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

Limit of im-
prisonment.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge ; but he or they shall enter in such form as the ¹[Provincial Government] may direct the following particulars :—

Record in cases
where there is no
appeal.

- (a) the serial number ;
- (b) the date of the commission of the offence ;
- (c) the date of the report or complaint ;
- (d) the name of the complainant (if any) ;
- (e) the name, parentage and residence of the accused ;
- (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d), clause (e), clause (f) or clause (g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed ;
- (g) the plea of the accused and his examination (if any) ;
- (h) the finding, and, in the case of a conviction, a brief statement of the reasons therefor ;
- (i) the sentence or other final order ; and
- (j) the date on which the proceedings terminated.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These figures and word were substituted for the word and figures "and 447" by S. 75 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1929).

3. These words were added, *ibid.*

S. 263.—Failure to record reasons under (h) vitiates trial 1933 M.W.N. 730 Cr. 124. See also 1937 M.W.N. 328 Cr. 51. What reasons must be stated 1914 M.W.N. 590 Cr. 124.

264. (1) In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

Record in appeal-
able cases.

(2) Such judgment shall be the only record in cases coming within this section.

265. (1) Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Language of re-
cord and judgment.

(2) The ¹[Provincial Government] may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

Bench may be
authorized to
employ clerk.

(3) If no such authorization be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

(4) If the Bench differ in opinion, any dissentient member may write a separate judgment.

See Criminal Rules of Practice Rule 193.

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

A.—Preliminary.

266. In this Chapter, except in section 276 and 307, and in Chapter XVIII, the expression "High Court" ³[means a High Court within the meaning of the Government of India Act, 1935, and includes such other Courts as the Provincial Government may be notification in the official Gazette] declare to be High Courts for the purposes of this Chapter ⁴[and of Chapter XVIII].

"High Court"
defined.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. This section will be further amended when Act XXXIV of 1936 comes into force.

3. These words and figures were substituted for the words and figures "means a High Court of Judicature established under the Indian High Courts Act, 1861, or the Government of India Act, 1915, and includes the Chief Court of Oudh, the Court of the Judicial Commissioner of Sind, and such other Courts as the Governor General in Council may, by notification in the Gazette of India" by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. These words and figures were added by S. 76 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

S. 264.—Notes of evidence not part of record under this section which can be looked into by Appellate Court 1927 M.W.N. 40; 1943 M.W.N. 891 Cr. 189. Substantiality of evidence embodied in judgment rests with Court. 1931 M.W.N. 118 Cr. 14.

S. 265.—Mere initialling is not 'signing' under this section 1930 M.W.N. 787 Cr. 179. Judgment prepared by President need not be signed by the other members tho' they must be aware of contents 52 Mad. 237. See also 53 Mad. 165. Delivering judgment prepared by one member in the absence of other members is illegal, 52 Mad. 237, *supra*.

Trials before High Court to be by jury.

267. All trials under this Chapter before a High Court shall be by jury,

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the Indian High Courts Act, 1861, ¹[or the Government of India Act, 1915,] ² [or the Government of India Act, 1935] the trial may, if the High Court so directs, be by jury.

Trials before Court of Session to be by jury or with assessors.

268. All trials before a Court of Session shall be either by jury, or with the aid of assessors.

Provincial Government may order trials before Court of Session to be by jury.

269. (1) The ³[Provincial Government may] ⁴* * * by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences before any Court of Session, shall be by jury in any district, and may ⁵* * * revoke or alter such order.

(2) The ³[Provincial Government], by like order, may also declare that, in the case of any district in which the trial of any offence is to be by jury, the trial of such offences shall, if the judge, on application made to him or of his own motion so directs, be by jurors summoned from a special jury list, and may revoke or alter such order.

(3) When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors, for such of them as are not triable by jury.

Trial before Court of Session to be conducted by Public Prosecutor.

270. In every trial before a Court of Session the prosecution shall be conducted by a Public Prosecutor.

B.—Commencement of Proceedings.

271. (1) When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty (2) If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

1. These words and figures were inserted by S. 2 and Schedule of the Amending Act, 1916 (XIII of 1916).

2. These words and figures were inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. These words were substituted for the words "Local Government" *ibid*.

4. The words "with the previous sanction of the Governor-General in Council" were omitted by S. 2 and Sch. I of the Devolution Act, 1920 (XXXVIII of 1920).

5. The words "with the like sanction", were repealed by S. 3 and Sch. II of the Repealing and Amending Act, 1927 (X of 1927).

S. 271 (2) In grave offences in the absence of prior confessor or incriminating statement evidence may be taken though accused pleads guilty 1934 M.W.N. 73 Cr. 17. Court may put questions, or look into the record before accepting plea 1935 M.W.N. 88 Cr. 24.

272. If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case:

Refusal to plead or claim to be tried.

Trial by same jury or assessors of several offenders in succession.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

273. (1) In trials before the High Court, when it appears to the High Court, at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect

Entry on unsustainable charges.

(2) Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

Effect of entry.

C.—Choosing a Jury.

274. (1) In trials before the High Court the jury shall consist of nine persons.

(2) In trials by jury before the Court of Session the jury shall consist of such uneven number, not being less than ¹[five] or more than nine, as the ²[Provincial Government], by order applicable to any particular district or to any particular class of offence in that district, may direct:

³[Provided that, where any accused person is charged with an offence punishable with death, the jury shall consist of not less than seven persons and, if practicable, of nine persons.]

275. (1) In a trial by jury before the High Court or Court of Session of a person who has been found under the provisions of this Code to be an European or Indian British subject, a majority of the jury shall, if such person before the first juror is called and accepted so requires, consist, in the case of an European British subject, of persons who are Europeans or Americans and, in the case of an Indian British subject, of Indians.

Jury for trial of European and Indian British subjects and others.

(2) In any such trial by jury of a person who has been found under the provisions of this Code to be an European (other than a European British subject) or an American, a majority of the jury shall, if practicable and if such European or American before the first juror is called and accepted so requires, consist of persons who are Europeans or Americans.]

276. The jurors shall be chosen by lot from the persons summoned to act as such in such manner as the High Court may from time to time by rule direct:

Jurors to be chosen by lot

Provided that—

firstly, pending the issue under this section of rules for any court the practice now prevailing in such Court in respect to the choosing of jurors shall be followed;

Existing practice maintained;

1. This word was substituted for the word "three" by S. 18 of the Criminal Law Amendment Act, 1923 (XII of 1923).

2. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order 1937.

3. This proviso was added by S. 18 of the Criminal Law (Amendment) Act 1923 (XII of 1923).

4. Section 275 was substituted by S. 14, *ibid*.

persons not summoned when eligible

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present;

trial before special jurors.

thirdly, ¹[in a trial before any High Court in the town which is the usual place of sitting of such High Court]—

- (a) if the accused person is charged with having committed an offence punishable with death, or
- (b) if in any other case a judge of the High Court so directs, the jurors shall be chosen from the special jury list hereinafter prescribed; and

fourthly, in any district for which the ²[Provincial Government] has declared that the trial of certain offences may be by special jury, the jurors shall, in any case in which the Judge so directs, be chosen from the special jury list prescribed in section 325.

Names of jurors to be called.

277. (1) As each juror is chosen, his name shall be called aloud, and upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Objection to jurors.

(2) Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Objection without grounds stated.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

Grounds of objection.

278 Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

- (a) some presumed or actual partiality in the juror;
- (b) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years;
- (c) his having by habit or religious vows relinquished all care of worldly affairs;
- (d) his holding any office in or under the Court;
- (e) his executing any duties of police or being entrusted with police-duties;
- (f) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

1. These words were substituted for the words "In the presidency towns" by S. 77 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S.—278. If juror is incapable of understanding English to follow proceedings trial is vitiated 1933 M. W. N. 1025 Cr. 165 (P.C.)

(g) his inability to understand the language in which the evidence is given, or when such evidence is interpreted the language in which it is interpreted;

(h) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

Decision of objection. **279.** (1) Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

Supply of place of juror against whom objection allowed. (2) If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276, or if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury:

Provided that no objection to such juror or other person is taken under section 278 and allowed.

Foreman of jury. **280.** (1) When the jurors have been chosen, they shall appoint one of their number to be foreman.

(2) The foreman shall preside in the debates of the jury, deliver the verdict of the jury and ask any information from the Court that is required by the jury or any of the jurors.

(3) If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

Swearing of jurors. **281.** When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.

Procedure when juror ceases to attend, etc. **282.** (1) If, in the course of a trial by jury at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged and a new jury chosen.

(2) In each of such cases the trial shall commence anew.

Discharge of jury in case of sickness of prisoner. **283.** The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

D.—Choosing Assessors.

Assessors how chosen. **284.** When the trial is to be held with the aid of assessors, [not less than three and, if practicable, four shall be chosen] from the persons summoned to act as such.

1. These words were substituted for the words "two or more shall be chosen, as the Judge thinks fit" by s. 15 of the Criminal Law Amendment Act, 1928 (XII of 1928).

1 [284A.] (1) In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be an European or Indian British subject, if the European or Indian British subject accused, or where there are several European British subjects accused or several Indian British subjects accused, all of them jointly before the first assessor is chosen so require, all the assessors shall, in the case of European British subjects, be persons who are Europeans or Americans or, in the case of Indian British subjects, be Indians.

(2) In a trial with the aid of assessors of a person who has been found under the provisions this Code to be an European other than an European (British subjects) or an American, all the assessors shall, if practicable and if such European or American before the first assessor is chosen so requires, be persons who are Europeans or Americans.]

283. (1) If in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

(2) If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed and a new trial shall be held with the aid of fresh assessors.

2 [DD.—Joint trials.]

2 [285-A.] In any case in which an European or American is accused jointly with a person not being an European or American, or an Indian British subject is accused jointly with a person not being an Indian, and such European, Indian British subject or American is committed for trial before a Court of Session, he and such other person may be tried together, but if he requires to be tried in accordance with the provisions of section 275 or section 284A and is so tried, and the other person accused requires to be tried separately, such other person shall be tried separately in accordance with the provisions of this Chapter.]

E.—Trial to Close of Cases for Prosecution and Defence.

286. (1) When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Opening case for prosecution.

(2) The prosecutor shall then examine his witnesses.

Examination of witnesses.

1. Section 284-A was inserted by S. 16 of the Criminal Law Amendment Act, 1928 (XII of 1928).

2. This heading and section 285-A were inserted by S. 17, *ibid.*

S. 286. (2).—There is a duty cast upon the Court to examine witnesses of its own accord to get at the truth even if not examined by prosecution 1938 M. W. N. Cr. 138. Prosecution not bound to call witnesses undoubtedly hostile 1940 M. W. N. Cr. 146. If such hostile witness be an eye witness he should be examined as a Court witness 1941 M. W. N. 766 Cr. 94. Practice of tendering eye witnesses for cross examination wrong 1939. M.W.N. Cr. 176.

Examination of accused before Magistrate to be evidence.

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence ¹.

Evidence given at preliminary inquiry admissible.

288 The evidence of a witness ² [duly recorded in the presence of the accused under Chapter XVIII] may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case ³ [for all purposes subject to the provisions of the Indian Evidence Act, 1872.]

Procedure after examination of witnesses for prosecution.

289. (1) When the examination of the witnesses for the prosecution and the examination (if any) of the accused shall be asked whether he means to adduce evidence.

(2) If he says that he does not, the prosecutor may sum up his case; and, if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

(3) If the accused or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

(4) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any) and after their cross-examination and re-examination (if any) may sum up his case.

1. See the Indian Evidence Act, 1872 (I of 1872). S. 80.

2. These words and figures were substituted for the words "duly taken in the presence of the accused before the committing Magistrate" by S. 78 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

3. These words and figures were added, *ibid.*

S. 287.—Answers of accused to questions by committing magistrate are not 'duly recorded' 1940 M.W.N. 1105 Cr. 149.

S. 288.—To admit the evidence given before the committing magistrate in preference to that given in the Session Court the Court must be satisfied that prior statement is true 47 Mad. 232, also 1930 M. W. N. Cr. 89 1989 M. W. N. 1184 Cr. 174 but formal enquiry as to truth not necessary 1942 M. W. N. 489 Cr. 121. Deposition before committing magistrate admitted under this section is evidence for all purposes 1937 M. W. N. 516 Cr. 107 (P. C.) Discretion to use as substantive evidence to be exercised if there is corroboration of earlier statements 1934 M. W. N. 1298 Cr. 228.

S. 289.—Mere omission to call upon accused to enter on his defence is a curable irregularity under S. 287 1936 M. W. N. 1991 Cr. 133.

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Right of accused
as to examination
and summoning of
witnesses.

Prosecutor's right
of reply.

1 [292. The prosecutor shall be entitled to reply—

- (a) if the accused or any of the accused adduces any oral evidence; or
- (b) with the permission of the Court, on a point of law; or
- (c) with the permission of the Court, when any document which does not need to be proved is produced by any accused person after he enters on his defence:

Provided that, in the case referred to in clause (c) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced.]

293. (1) Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

View by jury or
assessors.

(2) Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

294 If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

When juror or
assessor may be
examined.

Jury or assessors
to attend at adjourned
sitting.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

296 The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day; and subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

Looking up jury.

1. Section 292 was substituted by S 79 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

S. 291.—There is no right in the defence to have a witness not on the list given by the accused under S. 211 brought before the Sessions Court. They could have applied to the Sessions Judge under S. 540 of the Code. 1946 M.W.N. Cr. 29 (P.O.)

F.—Conclusion of Trial in Cases tried by Jury.

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall
 Charge to jury. proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Duty of Judge.

298. (1) In such cases it is the duty of the Judge—

- (a) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;
- (b) to decide upon the meaning and construction of all documents given in evidence at the trial;
- (c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;
- (d) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(a) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

S. 297.—Judge need not mention every point raised by defence but must put defence fairly to jury. He must warn the jury his opinion is not binding on them. 59 Mad. 904. Summarising evidence witness by witness instead of marshalling them is only a formal defect. 1935 M.W.N. 363 Cr. 67. Sessions Judge need not expound the Law in great detail 1936 M.W.N. 177 Cr. 35. All circumstances relating to identification must be put to the jury 1936 M.W.N. 292 Cr. 41. Direction as to onus resting in the Prosecution as well as the benefit of doubt, should be given to the jury 66 M.L.J. 216 (P.C.). Omission by the Judge to deal separately with case of each accused is serious defect 1937 M.W.N. 737 Cr. 161. 1941. M.W.N. 871 Cr. 82. Reference to previous conviction of accused even for testing truth of his statement is material misdirection 1934 M.W.N. 246 Cr. 46. Failure to direct the jury that they can find in the alternative is a serious omission 1934. M.W.N. 1140 Cr. 212; also 1934 M.W.N. 874 Cr. 61. Direction to the jury that there is a presumption as in ill (a) S. 112 I.E.A. is wrong as the jury may presume 1933 M.W.N. 320 Cr. 49; Charging jury with reference to only some of the accused before arguments on behalf of rest are concluded is irregular 36 Mad. 585. Non-direction as to the unsafety of relying on evidence of receiver of stolen property in a theft case is misdirection. 1938 M.W.N. 96 Cr. 24. In cases of robbery Judge must clearly direct the necessity of hurt or restraint as ingredient of the offence 1934 M.W.N. 214 Cr. 44. Also 1930 M.W.N. 1142 Cr. 270 54 Mad. 588. Where charge is also for dacoity that no of persons must be 5 or more 54 Mad. 588 (supra) also 1930 M.W.N. 1142 Cr. 270 (supra). In cases of robbery and dacoity 'for that end' and 'conjointly' as necessary must be emphasised. 1935 M.W.N. 1248 Cr. 292; 1936 M.W.N. 830 Cr. 154. Jury must be sufficiently directed as to the interval and implications arising out of ill (a) S. 114 I. E. Act 1928 M.W.N. 215 Cr. 31 1938 M.W.N. 862 Cr. 186; 1934 M.W.N. 875 Cr. 68. It is an incurable irregularity if Judge does not set out all the essential elements of offence 30 Mad. 44. On a charge of dacoity the jury must be directed as to possibility of some of accused being guilty in spite of acquittal of the other accused 1943 M.W.N. 290 Cr. 39. In a case of murder, the Judge must bring to the attention of the jury any evidence of provocation whether the defence have relied on it or not. 1946 M.W.N. Cr. 92 (P.C.)

S. 298.—Admissibility of confessions of accused is a matter for the judge to decide and should not be left to the jury. 1935 M.W.N. 321 Cr. 42. There are cases in which a judge in the interests of justice should express his opinion 1937 M.W.N. 552 Cr. 112.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(b) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of jury.

299. It is the duty of the jury—

- (a) to decide which view of the facts is true and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned ;
- (b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not ;
- (c) to decide all questions which according to law or to be deemed questions of fact ;
- (d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(a) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b) The question is whether a person entertained a reasonable belief on a particular point—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Retirement to consider.

300 In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to or hold any communication with, any member of such jury.

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Delivery of verdict.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Procedure where jury differ.

Verdict to be given on each charge. Judge may question jury.

303. (1) Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

S. 301.—Where accused charged with dacoity Jury cannot find him not guilty of dacoity but guilty of assault. 1935 M. W. N. 653 Cr. 117 If a charge consists of more than one count a general verdict is bad 1939 M. W. N. 409 Cr. 57 (P.C.)

S. 303.—See 1933 M. W. N. 409 Cr. 57 (P.C.) (*supra*) Sessions Judge is not entitled to ask reasons for the verdict of the Jury 43 Mad. 744.

Questions and answers to be recorded.

(2) Such questions and the answers to them shall be recorded.

See R. 166 Criminal Rules of Practice.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Amending verdict.

305. (1) When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgement in accordance with such opinion.

Verdict in High Court when to prevail.

(2) When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

(3) If the Judge disagrees with the majority, he shall at once discharge the jury.

(4) If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

306. (1) When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

Verdict in Court of Session when to prevail.

(2) If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall¹ [unless he proceeds in accordance with the provisions of section 562,] pass sentence on him according to law.

307 (1) If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which² [any accused person] has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case³ [in respect of such accused person] to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed,⁴ [and in such case,

Procedure where Sessions Judge disagrees with verdict.

1. These words and figures were inserted by S. 80 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVII of 1923).

2. These words were substituted for the words "the accused" by S. 81, *ibid*.

3. These words were inserted, *ibid*.

4. These words and figures were added, *ibid*.

S. 304.—Section does not apply where there is no mistake or accident. 1931 M.W.N. 857 Cr. 185.

S. 305.—Where Jury was discharged after inability to bring in an unanimous verdict Judge and foreman confer and then the Jury asked to retire and brought a verdict of guilty. Verdict improper 1934 M. W. N. Cr. 196 (P. C.)

S. 307.—The High Court will not interfere with the verdict of the Jury unless it is unreasonable 61 Mad. 886 (P. B.) A Sessions Judge ought not to make a reference unless he thinks that verdict is manifestly wrong. The High Court shall consider only whether such opinion of Judge is supported by evidence 1931 M.W.N. 1058 Cr. 217. Where Sessions Judge tried a case partly triable by assessors and part with a Jury he cannot refer whole case but only that portion where he is in disagreement with Jury 56 Mad. 715 followed in 1938 M.W.N. 581 Cr. 101. Facts accepted and inference drawn therefrom being not unjustifiable, no interference 1934 M.W.N. 1406 Cr. 264. On a reference the High Court can convict accused of any offence set out in the Judge's Charge I.L.R. 37 Mad. 296 following 22 Mad. 15; 24 Mad 641; 26 Mad. 248.

if the accused is further charged under the provisions of section 310, shall proceed to try him on such charge as if such verdict had been one of conviction].

(2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which ¹ [such accused] has been tried, but he may either remand ¹ [such accused] to custody or admit him to bail.

(3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict ¹ [such accused] of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

G.—Re-trial of Accused after Discharge of Jury.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

Re-trial of acc.
used after discharge
of jury.

H.—Conclusion of Trial in Cases tried with Assessors.

309. (1) When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally ² [on all the charges on which the accused has been tried], and shall record such opinion, ² [and for that purpose may ask the assessors such questions as are necessary to ascertain what their opinions are. All such questions and the answers to them shall be recorded].

Delivery of opinion
of assessors.

Judgment.

(2) The Judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors.

(3) If the accused is convicted, the Judge shall ³ [unless he proceeds in accordance with the provisions of section 562]. pass sentence on him according to law.

See Criminal Rules of Practice. Rule 164.

I.—Procedure in case of Previous Conviction.

310. In the case of a trial by a jury or with the aid of assessors when the accused is charged with an offence and further charged that he is by reason of a previous conviction liable to enhanced punishment or to punishment of a different kind for such subsequent offence, the procedure prescribed

Procedure in case
of previous conviction.

S. 309.—Questions may be put as to ascertain what the opinion of assessors is and but not to ascertain the reasons for it 1931 M.W.N. 1189 Cr. 355. Opinion of all the assessors not merely of some must be taken 26 M 598.

1. These words were substituted for the words "the accused" by S. 81, of the Code of Criminal Procedure (Amendment) Act 1928 (Act XVIII of 1928).

2. These words were inserted by S. 82 of the Code of Criminal Procedure (Amendment) Act, 1928 XVIII of 1928).

3. These words and figures were inserted, *ibid.*

4. Section 310 was substituted by S. 83, *ibid.*

by the foregoing provisions of this Chapter shall be modified as follows, namely :—

- (a) Such further charge shall not be read out in Court and the accused shall not be asked to plead thereto, nor shall the same be referred to by the prosecution, or any evidence adduced thereon unless and until,
 - (i) he has been convicted of the subsequent offence, or
 - (ii) the jury have delivered their verdict, or the opinions of the assessors have been recorded, on the charge of the subsequent offence.

(b) In the case of a trial held with the aid of assessors, the Court may, in its discretion, proceed or refrain from proceeding with the trial of the accused on the charge of the previous conviction.]

311. Notwithstanding anything in the last foregoing section, evidence of the previous conviction may be given at the trial for the subsequent offence, if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act, 1872.

When evidence of previous conviction may be given.

J.—List of jurors for High Court, and summoning jurors for that Court.

1 [312. The High Court may prescribe the number of persons whose names shall be entered at any one time in the special jurors' list :

Number of special jurors.

Provided that no definite number of Europeans or of Americans or of Indians shall be so prescribed.]

313. (1) The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

Lists of common and special jurors.

- (a) a list of all persons liable to serve as common jurors ; and
- (b) a list of persons liable to serve as special jurors only.

(2) Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

(3) No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

2 [(4) The Provincial Government may exempt any salaried servant of the Crown from serving as a juror.]

(5) The clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said list as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Discretion of officer preparing lists.

1. Section 312 was substituted by S. 18 of the Criminal Law Amendment Act, 1928 (XII of 1928).

2. This Sub-section was substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Publication of lists preliminary and revised.

314. (1) Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the 1 [official Gazette] before the fifteenth day of April next after their preparation.

(2) Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the 1 [official Gazette] before the first day of May next after their preparation.

(3) Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

315. (1) Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions 2 [in the town which is the usual place of sitting of each High Court], 3 [as many of those who are liable to serve on special or common juries respectively as the Clerk of the Crown considers necessary.]

Number of jurors to be summoned.

(2) No person shall be so summoned more than once in six months unless the number cannot be made up without him.

(3) If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Supplementary summons.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the 4 [town which is the usual place of sitting of such High Court] for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Summoning jurors outside the place of sitting of High Courts.

317. (1) In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's Army 5 [or Air Force] resident within ten miles of its place of sitting as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

Military jurors.

1. These words were substituted for the words "Local official Gazette" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words were substituted for the words "in each presidency town" by S. 64 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

3. These words were substituted for the words "at least twenty-seven of those who are liable to serve on special juries, and fifty four of those who are liable to serve on common juries", *ibid.*

4. These words were substituted for the words "presidency-towns" by S. 85, *ibid.*

5. These words were inserted by S. 2 and Sch. I of the Repealing and Amending Act, 1927 (X of 1927).

(2) All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent ¹[official] duty, or for any other special ¹[official] reason.

318. Any person summoned under section 315, section 316 or section 317, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable, by order of the judge, to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment for a term not exceeding six months in the civil jail until the fine is paid:

Provided that the Court may in its discretion remit any fine or imprisonment so imposed.

K.—List of Jurors and Assessors for Court of Session, and summoning jurors and Assessors for that Court.

319. All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside, or, if the ²[Provincial Government], on consideration of local circumstances, has fixed any smaller area in this behalf, within the area so fixed.

320. The following persons are exempt from liability to serve as jurors or assessors, namely:—

- (a) officers in civil employ superior in rank to a District Magistrate;
- ³ [(aa) members of any Legislature in British India;]
- (b) salaried Judges;
- (c) Commissioners and Collectors of Revenue or Customs;
- (d) police-officers and persons engaged in the Preventive Service in the Customs Department;
- (e) persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;
- (f) persons actually officiating as priests or ministers of their respective religions;
- (g) persons in Her Majesty's Army ⁴ [, Navy], ⁵[or Air Force], except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;
- (h) surgeons and others who openly and constantly practise the medical profession;

1. This word was substituted for the word "military" by S. 2 and Sch. 1 of the Repealing and Amending Act, 1927 (X of 1927).

2. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. This clause was substituted. *ibid.*

4. This word was substituted by S. 2 and Sch. of the Amending Act, 1934 (XXXV of 1934.)

5. These words were inserted by S. 2 and Sch. 1 of the Repealing and Amending Act, 1937 (X of 1937).

- (i) legal practitioners (as defined by the Legal Practitioners' Act, 1879), in actual practice ;
- (j) persons employed in the Post-Office and Telegraph Departments ;
- (k) persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641.¹
- (l) other persons exempted by the ² [Provincial Government] from liability to serve as jurors or assessors.

See Criminal Rules of Practice, Rule 148.

321. (1) The Sessions Judge, and the Collector of the district or such other officer as the ² [Provincial Government] appoints in this behalf, shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 278, clauses (b) to (h), both inclusive.

(2) The list shall contain the name, place of abode and quality or business of every such person ; and, if the person is an European or an American, the list shall mention the race to which he belongs.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the court-houses of the District Magistrate and of the District Court, and extracts therefrom in some conspicuous place in the town or towns in or near which the persons named in the extract reside.

323. To every such copy or extract shall be sub-joined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the sessions court-house, and at a time to be mentioned in the notice.

324. (1) For the hearing of such objections the Sessions Judge shall sit with the Collector or other officer as aforesaid and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror, or as an assessor, or who may establish his right to any exemption from service given by section 320 and insert the name of any person omitted from the list whom they deem qualified for such service.

(2) In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

(3) A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

(4) Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

1. See now the Code of Civil Procedure, 1908, (V of 1909), Ss. 132 and 133.

2. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

(5) Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

Annual revision of list. (6) The list so prepared and revised shall be again revised once in every year.

(7) The list so revised shall be deemed a new list and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

325. In the case of any district for which the ¹ [Provincial Government] has declared that the trial of certain offences shall, if the Sessions Judge so direct, be by special jury, the Sessions Judge and the Collector of such district or other officer as aforesaid shall prepare, in addition to the revised list heretofore prescribed, a special list containing the names of such jurors as are borne on the revised list and are, in the opinion of such Sessions Judge and Collector or other officer as aforesaid, by reason of their possessing superior qualifications in respect of property, character or education, fit persons to serve as special jurors: Provided always that the inclusion of the name of any person in such special list shall not involve the removal of his name from the revised list nor relieve him of his liability to serve as an ordinary juror in cases not tried by special jury.

326. (1) The Sessions Judge shall ordinarily, seven days at least before the day which he may from time to time fix for holding the sessions, send a letter to the District Magistrate requesting him to summon as many persons named in the said revised list or the said special list as seen to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial ² [and including, where any accused person is an European or American, as may be required for the purpose of choosing jurors or assessors for the trial].

(2) The names of the persons to be summoned shall be drawn by lot in open Court, excluding those who have served within six months unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

³ [(3) Where the accused requires and is entitled to be tried under the provisions of section 275, there shall be chosen by lot, in the manner prescribed by or under section 276, from the whole number of persons returned the jurors who are to constitute the jury until a jury containing the proper number of Europeans or Europeans and Americans or of Indians, as the case may be, has been obtained:

Provided that, in any case in which the proper number of Europeans or Americans cannot otherwise be obtained, the Court may, in its discretion for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.]

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words were added by S. 19 of the Criminal Law Amendment Act, 1923 (XII of 1923).

3. Sub-section (3) was added, *ibid.*

1 [(4) Where, under the proviso to sub-section (3), the Court proposes to summon as a juror any person in His Majesty's Army, the provisions of section 317 shall apply in like manner as they apply for the purpose of the summoning of military jurors for a trial under section 316].

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive or whenever for other reasons such direction is found to be necessary.

Power to sum-
mon another set of
jurors or assessors.

328. Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

329. When any person summoned to serve as a juror or assessor is in the service of the ² [Crown] or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears on the representation of the head of the office in which he is employed that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

When Crown of
Railway servant
may be excused.

330. (1) The Court of Session may for reasonable cause excuse any juror or assessor from attendance at any particular session.

Court may relieve
special jurors from
liability to serve
again as jurors for
twelve months.

(2) The Court of Session may, if it shall think fit, at the conclusion of any trial by special jury, direct that the jurors who have served on such jury shall not be summoned to serve again as jurors for a period of twelve months.

Court may excuse
attendance of
juror or assessor.

331. (1) At each session the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

(2) Such list shall be kept with the list of the jurors and assessors as revised under section 324.

(3) A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

332 (1) Any person summoned to attend as a juror or as an assessor who without lawful excuse, fails to attend as required by summons, or who having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court, after being ordered to attend, shall be liable by order of the Court of Session to a fine not exceeding one hundred rupees.

(2) Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

1. Sub-section (4) was added by S. 19 of the Criminal Law Amendment Act, 1933 (XII of 1933).

2. This word was substituted for the word "Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

(3) For good cause shown, the Court may remit or reduce any fine so imposed.

(4) In default of recovery of the fine by attachment and sale, such juror or assessor may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

L.—Special Provisions for High Courts.

333. At any stage of any trial before a High Court under this Code, before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Power of Advocate General to stay prosecution.

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Time of holding sittings.

335. (1) The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the ¹ [Provincial Government], may direct.

Place holding sitting.

(2) But it may from time to time, ² * * * * * with the consent of the ³ [Provincial Government], hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

(3) Such officer as the Chief Justice directs shall give notice beforehand in the ⁴ [official Gazette] of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

Notice of sittings.

336. [Place of trial of European British subjects.] Repealed by S. 20 of Act XII of 1923.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

337. ⁵[(1) In the case of any offence triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment which may extend to ten years, or any offence punishable under section 211 of the Indian Penal

Tender of pardon to accomplices.

1. These words were substituted for the words "Governor-General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words "in the case of the High Court at Fort William with the consent of the Governor General in Council, and in all other cases" were omitted *ibid*.

3. These words were substituted for the words "Local Government", *ibid*.

4. These words were substituted for the words "Local official Gazette", *ibid*.

5. Sub-section (2) and (1-4) were substituted for sub-section (1) by S. 86 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

S. 337.—Immaterial irregularities in non-observance of requirements in the Code for the benefit of accused or consultation with Provincial Government do not vitiate tender of pardon I.L.R. 1939 Lah. 528. 1938 M.W.N. 960 Cr. 173. (P.C.)

Code with imprisonment which may extend to seven years, or any offence under any of the following sections of the Indian Penal Code, namely, sections 216-A, 369, 401, 435 and 477-A, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or any Magistrate of the first class may, at any stage of the investigation or inquiry into, or the trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof :

Provided that, where the offence is under inquiry or trial, no Magistrate of the first class other than the District Magistrate shall exercise the power hereby conferred unless he is the Magistrate making the inquiry or holding the trial, and, where the offence is under investigation, no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be inquired into or tried and the sanction of the District Magistrate has been obtained to the exercise thereof.]

¹[(1A) Every Magistrate who tenders a pardon under sub-section (1) shall record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record :

Provided that the accused shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.]

(2) Every person accepting a tender under this section shall be examined as a witness in ²[the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any].

³[(2A) In every case where a person has accepted a tender of pardon and has been examined under sub-section (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, commit him for trial to the Court of Session or High Court, as the case may be.]

(3) Such person, ⁴[unless he is already on bail], shall be detained in custody until the termination of the trial, ⁵*

6* * * *

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Power to direct
tender of pardon.

1. See footnote 5 on pre-page.

2. These words were substituted for the words "the case" by S. 86 of the Code of Criminal Procedure (Amendment) Act. 1923 (XVIII of 1923).

3. This sub-section was added, *ibid.*

4. These words were substituted for the words "if not on bail", *ibid.*

5. The words "by the Court of Session or High Court, as the case may be" were omitted, *ibid.*

6. Sub-section (4) of section 337 was omitted, *ibid.*

339. (1) Where a pardon has been tendered under section 337 or section 338, and ¹ [the Public Prosecutor certifies that in his opinion] any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made ² [such person may be] tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

³ [Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to plead at such trial that he has complied with the conditions upon which such tender was made in which case it shall be for the prosecution to prove that such conditions have not been complied with.]

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him ⁴ [at such trial].

(3) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

Procedure in trial of person under section 339.

[**339-A.** (1) The Court trying under section 339 a person who has accepted a tender of pardon shall—

(a) if the Court is a High Court or Court of Session, before the charge is read out and explained to the accused under section 271, sub-section (1), and

(b) if the Court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken,

ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and the jury, or the Court with the aid of the assessors, or the Magistrate, as the case may be, shall, before judgment is passed in the

1. These words were inserted by S. 87 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1923).

2. These words were substituted for the words "he may be" *ibid.*

3. This proviso was added *ibid.*

4. These words were substituted for the words "when the pardon has been forfeited under this section", *ibid.*

5. Section 339-A was inserted by S. 88, *ibid.*

S. 339.—Onus is on the Prosecution to prove that pardon has been forfeited by bad faith under this section 1930 M.W.N. 773 Cr. 178 proper order is to consider the question whether there was forfeiture first and then whether the accused is guilty of the offences he is charged with. 1930 M.W.N. (*supra*). Where accused rejects the condition tendered to him and refuses to give evidence as approver before he is put into the box his action does not amount to forfeiture of the pardon. 1923 M.W.N. 618. Joint Commitment of approver who has forfeited the pardon with other accused is illegal but trials having been held no prejudice to accused 1937 M.W.N. 879 Cr. 183. Approver should not be treated as an accused without being examined as a witness. 81 Mad. 272. To prosecute an approver the prosecution must fully establish that the disclosure made by him in the box was incomplete and false 89 Mad. 178.

case, find whether or not the accused has complied with the conditions of the pardon, and, if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal.]

Right of person
against whom
proceedings are
instituted to be
defended and his
competency to be
a witness.

1 [340. (1) Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

(2) Any person against whom proceedings are instituted in any such Court under section 107, or under Chapter X, Chapter XI, Chapter XII or Chapter XXXVI, or under section 552, may offer himself as a witness in such proceedings.]

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Procedure where
accused does not
understand proceed-
ings.

342 (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning they accused, put such questions to him

Power to examine
the accused

1. Section 340 was substituted by S. 89 of the Code of Criminal Procedure (Amendment) Act. 1928 (XV III of 1928).

S. 340.—Magistrate's refusal to hear arguments of accused's pleader is not a mere irregularity but an illegality A.L.R. 1928 Mad. 1234.

S. 341.—Where accused is deaf and dumb the Court should convict him of the least offence disclosed. 1934 M.W.N. 924 Cr. 172. Where accused is deaf and dumb it is desirable that proceedings are referred to the High Court and the High Court order detention in Jail 1935 M.W.N. 1287 Cr. 231. 1937 M.W.N. 1121 Cr. 225. In a case of murder where accused complains of inability to hear question put by Judge conviction on sufficient evidence valid 1940 M.W.N. 1269 Cr. 182.

S. 342.—Provision in latter part of clause (1) is mandatory and failure is not a mere irregularity but vitiates the trial 1937 M.W.N. 571; Cr. 134. It is not however obligatory to question accused again after cross and re-examination of witnesses recalled at the instance of accused 46 Mad. 149 (F.B.) over-ruling 15 Mad. 920. also 1928 M.W.N. 860. Object of section is to give accused opportunity if he so desires to explain his part in the case. It is desirable that the magistrate should warn the accused that he is not obliged to say anything! A.L.R. 1926 Mad. 570 following 39 Mad. 770. Section does not apply to trials in Summons Cases. 46 Mad. 766 (F.B.) It is not necessary to put to the accused every piece of evidence but only such from which adverse inference could be drawn against him 59 Mad. 622 following 1933 M.W.N. 409 Cr. 57 (P.C.). Court must put to accused additional evidence put in by Prosecution after defence is closed 1936 M.W.N. 825 Cr. 149 1941 M.W.N. 679 Cr. 83. Where evidence is circumstantial circumstances leading to conviction must be put to accused 59 Mad. 629. also 59 Mad. 631; 1934 M.W.N. 685 Cr. 123. Reading out précis of evidence for 2 printed pages and asking accused what he has to say is not compliance of the section 1939 M.W.N. 883 Cr. 143 I.L.R. 1944 M. 304. also 1945 M.W.N. 790 Cr. 184. In a *de novo* trial non-examination of accused mere irregularity. 58 Mad. 127 also after re-cross-examination 1934 M.W.N. 406 Cr. 76. Where accused in answer to a general question shows he is aware of the circumstances against him and explains them the Judge need not ask any more questions I.L.R. 1940 Mad. 514. Examination to fill up gaps in Prosecution is illegal 1918 M.W.N. 871 Cr. 155. Magistrate must not rely upon the answers to base a conviction 1937 M.W.N. 589. Cr. 129. But consideration must be given especially in a case under S. 499 Exception 9 I.L.R. 1945 Mad. 749. Answers to questions improperly put to accused could not be used against him. Even a small piece of circumstantial evidence will necessitate putting questions. 1943 M.W.N. 135 Cr. 13.

as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(4) No oath shall be administered to the accused.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

No influence to be used to induce disclosures.

344. (1) If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody.

Power to postpone or adjourn proceedings

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Remand.

(2) Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Explanation.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Reasonable cause for remand.

345. (1) The offences punishable under the sections of the Indian Penal Code [specified] in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table:—

Compounding offence.

1. This word was substituted for the word "described" by S. 90 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

S. 344.—If defence witnesses were served but were absent on the date of hearing no ground for adjournment 46 Mad. 253. High Court will not interfere with a discretionary order under this section 50 Mad. 839. In a case under S. 400 I.P.C. adjournment ought to have been granted to enable accused to produce a witness to prove how he came into possession of jewels in question 1933 M.W.N. 1978 Cr. 205. In a case under S. 212 I.P.C. till the inquiry of the main case trial should be stayed 1937 M.W.N. 21 Cr. 5. Where P.Ws. had been already recalled for further Cross-examination adjournment on terms is proper 1934 M.W.N. 100 Cr. 28. Provisions of the section relating to costs do not apply to appeals 1933 M.W.N. 878 Cr. 140. Costs may be awarded to be paid by an informant though not a complainant 40 Mad. 1130.

Offence.	Sections of Indian Penal Code applicable.	Persons by whom offence may be compounded.
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt	336, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 312	The person restrained or confined.
Assault or use of criminal force	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass	447	The person in possession of the property trespassed upon.
House trespass	448	
Criminal breach of contract of service . .	490, 491, 494	The person with whom the offender has contracted.
Adultery	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman.	498	
Defamation	500	The person defamed.
Printing or engraving matter, knowing it to be defamatory.	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation except when the offence is punishable with imprisonment for seven years	506	The person intimidated.
Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.]

2[(2) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table :—

1. This entry was added by S. 90 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. This sub-section was substituted *sed.*

S. 345—Agreement to refer to arbitrators is not *per se* composition of the offence. Until the arbitrators decided the offence cannot be treated as compounded. A.I.R. 1925 Mal. 1211. Court should not substitute the discretion of the prosecution for its own in an offence under S. 420 I.P.C. 1932 M.W.N. 1088 Cr. 228. Under Sub-section (2) any act done by parties before prosecution began cannot be composition 1937 M.W.N. 864 Cr. 169. Where accused charged under Ss. 420 and 406 I.P.C. order of acquittal on the charge under S. 420 on permission granted for compounding on that charge does not amount to acquittal under the other charge 1935 M.W.N. 914 Cr. 154. Refusal to give leave for compounding not revisable ordinarily 1938 M.W.N. 245 Cr. 87. There is no legal obstacle to the conviction of one accused when another has been acquitted as a result of composition 1938 M.W.N. 222 Cr. 90. 41 M. 823. Sworn statements are to be looked into in cases where sanction is sought to compound major offences disclosed in complaint 1945 M.W.N. 887 Cr. 128. The compounding of offences in the first paragraph is lawful even if it takes place before any complaint is filed in respect thereof and such composition has the effect of acquittal and is a bar to trial 41 Mad. 685.

Offence.	Sections of the Indian Penal Code applicable.	Persons by whom offence may be compounded.
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Voluntarily causing grievous hurt	325	Do.
Voluntarily causing grievous hurt on grave and sudden provocation.	336	Do.
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Do.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Do
Wrongfully confining a person for three days or more.	343	The person confined.
Wrongfully confining a person in secret	346	Do.
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Dishonest misappropriation of property	403	The owner of the property misappropriated.
Cheating	417	The person cheated.
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect.	418	Do.
Cheating by personation	419	Do.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	Do.
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeit trade or property mark.	486	Do.
Marrying again during the lifetime of a husband or wife.	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intending upon the privacy of a woman.	509	The woman whom it is intended to insult or whose privacy is intruded upon.

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is 1[under the age of eighteen years or is] an idiot or a lunatic, any person competent to contract on his behalf may 2[with the permission of the Court] compound such offence.

1. These words were substituted for the words "a minor" by S. 90 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. These words were inserted. *ibid.*

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

1[(54) A High Court acting in the exercise of its powers of revision under section 439 may allow any person to compound any offence which he is competent to compound under this section.]

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused ²[with whom the offence has been compounded].

(7) No offence shall be compounded except as provided by this section.

346. (1) If, in the course of an inquiry or a trial before a Magistrate in any district outside the presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

347. (1) If in any inquiry before a Magistrate, or in any trial before a Magistrate, before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall ³* * * commit the accused under the provisions here-inbefore contained.

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

1. Sub-section (54) was inserted by S. 90 of Act XVIII of 1923.

2. These words were added, *ibid*.

3. The words "stop further proceedings and" were omitted by S. 91 *ibid*.

S. 346.—The word 'evidence' is not restricted to depositions recorded by magistrate but includes all facts and statements disclosed by the enquiry A.I.R. 1927 Mad. 591. True scope of Magistrate's powers are wide to embrace sending the case back to the magistrate who originally submitted the case 54 Mad. 163 (F.B.) overruling 45 Mad. 816. where it was held that the magistrate cannot simply return the case back. A Joint magistrate has no power to order the sub-magistrate who sent the case to hold a preliminary enquiry as the words 'having jurisdiction' means having jurisdiction to try the case and not merely to commit the case to Session. 1935 M.W.N. 958 Cr. 174. On a presentation of a complaint if the receiving magistrate finds he has no jurisdiction he cannot act under this section 1948 M.W.N. 885 Cr. 63.

S. 347.—Section 254 does not limit the discretion given to a Magistrate under this section to commit a case to the Sessions 41 Mad. 84-A commitment under this section can be made only after complying with the provisions relating to inquiries before commitment 52 Mad. 995 also 1932 M.W.N. Cr. 113. Case and Counter case must be committed together, 1929 M.W.N. Cr. 185 also 1932 M.W.N. Cr. 113 (*supra*) also M. 1929 M.W.N. Cr. 187; Magistrate acting under this section need not ask accused whether he wishes to further cross examine witnesses 1935 M.W.N. 646 Cr. 110.

[348. (1)] Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ²[if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for committing the accused] be committed to the Court of Session or High Court, as the case may be, unless the Magistrate ³[is competent to try the case and] is of opinion that he can himself pass an adequate sentence if the accused is convicted :

Provided that, if ⁴[any Magistrate in the district] has been invested with powers under section 30, the case may be transferred to him instead of being committed to the Court of Session.

⁵(2) When any person is committed to the Court of Session or High Court under sub-section (1), any other person accused jointly with him in the same inquiry or trial shall be similarly committed, unless the Magistrate discharges such other person under section 209.]

See Criminal Rules of Practice Rule 95.

349. (1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

⁶[(1 A) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-section (1) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the District Magistrate or Sub-divisional Magistrate.]

1. This section was renumbered by S. 92 of Act XVIII of 1923.

2. These words were inserted, *ibid.*

3. These words were substituted for the words "before whom the proceedings are pending," *ibid.*

4. These words were substituted for the words "the District Magistrate," *ibid.*

5. Sub-section (2) was added, *ibid.*

6. This sub-section was inserted by S. 33 *ibid.*

S. 348.—Magistrate is bound to commit if there has been a previous conviction for one of the offences described unless he can adequately punish the accused 38 Mad. 552. Magistrate has no power to convict the accused and then send up the papers to the Sub-Divisional Magistrate. 1935 M.W.N. 1293 Cr. 237, also 1946 M.W.N. Cr. 7; 1941 M.W.N. 524 Cr. 64.

S. 349. Where three accused are convicted and the case of only one accused sent up under this section, the magistrate should have sent up the case of all the accused 1930 M.W.N. 72. Sub magistrate cannot refer a case under this section to the Sessions Judge. 1938 M.W.N. 1428 Cr. 230. Sub magistrate cannot send only one of two accused tried jointly by him to the Sub-divisional magistrate to be proceeded with under S. 562 of the Code 1936 M.W.N. 1251 Cr. 236. See also 1941 M.W.N. 763 Cr. 96 and 1945 M.W.N. 182 Cr. 34 I.L.R. 1945 Mad. 594 cases under Act IV of 1940 in case of children. But see 1913 M.W.N. 60 Cr. 9 where it was held that section has no application to a reference under S. 562 of the Code. Sub-divisional Magistrate cannot remand the case submitted to him under this section 1942 M.W.N. 134 Cr. 28. Magistrate to whom case is referred under this section must hear the case and then pass judgment as if in a case tried by him 1943 M.W.N. 148 Cr. 24.

(2) The Magistrate to whom the proceedings are submitted may if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law :

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

350. (1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the inquiry or trial :

Conviction or
commitment on
evidence partly
recorded by one
Magistrate and
partly by another.

Provided as follows :—

- (a) in any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard ;
- (b) the High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was held, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 346 ¹[or in which proceedings have been submitted to a superior Magistrate under section 349].

1. These words and figures were added by S. 91 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

S. 350.—Discretion of new magistrate under this section is unfettered when a case is transferred to him. 1930 M.W.N. 911 Cr. 215. Section applies to the case of a Magistrate acting upon evidence recorded by more than one magistrate who afterwards ceased to exercise jurisdiction. 47 Mad. 245. Sub-section 1 proviso (a) does not apply to warrant cases before a charge is framed. 46 Mad. 719 following 32 Mad. 220 (F.R.); 38 Mad. 585; and 43 Mad. 511 (F.R.) also 32 Mad. 218; 1933 M.W.N. 94 Cr. 6; 1938 M.W.N. 587 Cr. 107. In a *de novo* trial when the accused did not want to re-examine of some of the Prosecution witnesses the complainant cannot insist on re-summoning them. A.I.R. 1925 M. 217; Where magistrate was transferred and successor granted a *de novo* trial and the case was transferred to the original magistrate, the magistrate must begin proceedings afresh A.I.R. 1925 Mad. 174. also 57 Mad. 1019, dissenting from A.I.R. 1927 Mad. 81. A *de novo* trial is a trial from the very beginning and mere recalling of witnesses for accused to cross examine is not sufficient compliance 1925 M.W.N. 652. Sub-section 1 (a) applies to proceedings under S. 107 of this Code. 45 Mad. 511 (F.R.) *supra*. Right of accused to demand recalling and re-examining witnesses applies only to trials and not to enquiries. 54 Mad. 512. Accused can only once apply for re-examination of witnesses under proviso (a) 1934 M.W.N. 1357 Cr. 253. Where case was retransferred to original magistrate in the absence of request of accused for recalling witnesses not necessary to hold a fresh trial. 1935 M.W.N. 1200 Cr. 216. Where in a *de novo* trial the defence recalled only one witness and decision arrived at from evidence recorded by predecessor plus the evidence of the recalled witness no illegality 1936 M.W.N. 699 Cr. 123; 1937 M.W.N. 173 Cr. 29. Interference with the conviction for non observance of provisions of this section will only lie only if accused materially prejudiced 1937 M.W.N. 1245 Cr. 261; 1938 M.W.N. 820 Cr. 136; 1935 M.W.N. 179; Cr. 85. Section applies to Panchayat Courts 1934 M.W.N. 743 Cr. 151. The accused cannot as of right have witnesses recalled 1941 M.W.N. 1027 Cr. 151. Magistrate can have witnesses recalled even if accused does not want them. 1941 M.W.N. 177 Cr. 169.

1[(3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of sub-section (1).]

2[350A. No order or judgment of a Bench of Magistrates shall be invalid by reason only of a change having occurred in the constitution of the Bench in any case in which the Bench by which such order or judgment is passed is duly constituted under sections 15 and 16, and the Magistrate constituting the same have been present on the Bench throughout the proceedings.]

Changes in constitution of Bench-
es.

351. (1) Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

Detention of
offenders attending
Court.

(2) When the detention takes place in the course of an inquiry under Chapter XVIII or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them :

Courts to be open.

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in the room or building used by the Court.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

353. Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Evidence to be
taken in presence
of accused.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Manner of record-
ing evidence outside
presidency-towns.

1. This sub-section was added, by S. 94 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. Section 350 A was inserted by S. 95, *ibid.*

S. 350A.—Where only three magistrates of a Bench have heard the case and seven sign judgment; this is an illegality 1930 M.W.N. 770 Cr. 170. Where four magistrates sign judgment but only two were present throughout proceedings conviction must be set aside 1933 M.W.N. 93 Cr. 5; also 1938 M.W.N. 591 Cr. 111; 1941. 2 M.L.J. 1049.

S. 353.—Evidence let in before a Judge exhibited before successor Judge even with the consent of accused is illegal. 46 Mad. 117. Consent or want of objection on the part of accused to reception of evidence under S. 33 I.E.A. will not entitle Court to admit evidence 39 Mad. 449.

355. (1) In summons-cases tried before a Magistrate other than a Presidency Magistrate, and in cases of the offences mentioned in sub-section (1) of section 260, clauses (b) to (m), both inclusive, when tried by a Magistrate of the first or second class and in all proceedings under section 514 (if not in the course of a trial), the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Record in summons cases and in trials of certain offences by first and second class Magistrates

(2) Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

(3) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record.

356. (1) In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates), and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence and shall be signed by the Magistrate or Sessions Judge.

Record in other cases outside presidency-towns.

(2) When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Evidence given in English.

¹ [(2-A) When the evidence of such witness is given in any other language, not being English, than the language of the Court, the Magistrate or Sessions Judge may take it down in that language with his own hand, or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence, and an authenticated translation of such evidence in the language of the Court or in English shall form part of the record.]

(3) In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

(4) If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

1. This sub-section was inserted by S. 96 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

S. 356.—Committal based on mere memoranda of evidence in a Preliminary Enquiry is invalid 1934 M.W.N. 1093 Cr. 205.

357. (1) The ¹ [Provincial Government] may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so and shall cause the evidence to be taken down in writing from his dictation in open Court.

(2) The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record.

Provided that the ¹ [Provincial Government] may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the ¹ [Provincial Government] has made the order referred to in section 357, in the manner provided in the same section.

Option to Magistrate in cases under section 356.

Mode of recording evidence under section 356 or section 357.

359. (1) Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of a question and answer, but in the form of a narrative.

(2) The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

360. (1) As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

Procedure in regard to such evidence when completed.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

(3) If the evidence is taken down in a language different from that in which it has been given and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

See Criminal Rules of Practice, Rule 64.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 360.—The provisions of this section are not complied with by giving the witness an opportunity for reading the deposition himself, except where the witness is deaf. 1927 M.W.N. 103 (P.C.). Distinction between this section and section 361. 54 I.A. 96 (P.C.) Non-compliance with the provisions of this section does not warrant quashing of conviction 1927 M.W.N. 103 (Supra). If deposition upon which a prosecution for perjury is based has not been read over to witness where neither judge nor counsel was present, evidence not properly taken in law I.L.R. 28 Mad. 908. Requirements of the section not complied with unless evidence is read out to witness as soon as it is completed and not afterwards 49 Mad. 71.

Interpretation of evidence to accused or his pleader.

361. (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

362. (1) In every case ¹[tried by a Presidency Magistrate in which an appeal lies, such Magistrate] shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

Record of evidence in presidency Magistrates' Courts.

(2) Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

² [(2A) In every case referred to in sub-section (1), the Magistrate shall make a memorandum of the substance of the examination of the accused. Such memorandum shall be signed by the Magistrate with his own hand, and shall form part of the record.]

(3) Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence ³ [unless they are sentences of imprisonment ordered to run concurrently.]

⁴ [(4) In cases other than those specified in sub-section (1), it shall not be necessary for a Presidency Magistrate to record the evidence or frame a charge.]

Remarks respecting demeanour of witness.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Examination of accused how recorded.

⁵ **364.** (1) Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter ⁶ [or the Chief Court of Oadh]? *

1. These words were substituted for the words "in which a Presidency Magistrate imposes a fine exceeding two hundred rupees or imprisonment for a term exceeding six months, he" by S. 97 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. This sub-section was inserted, *ibid.*

3. These words were added, *ibid.*

4. This sub-section was added, *ibid.*

5. This section will be further amended when Act XXXIV of 1926 comes into force.

6. These words were inserted by S. 2 and Sch. of the Oudh Courts (Supplementary) Act, 1925 (XXXII of 1925).

7. These words "or the Chief Court of the Punjab" were repealed by the Repealing and Amending Act, 1919 (XVIII of 1919).

S. 361.—The two paragraphs of the section are not mutually exclusive as accused may be in a better position to appreciate evidence 1929 M.W.N. 896 Cr. 201.

1 * * * the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and bearing in mind that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, 2 * * * * * as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263³ [or in the course of a trial held by a Presidency Magistrate].

365. Every High Court established by Royal Charter 4[and the Chief Court of Oudh] 5* 6* * 7* * 8[shall] from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, 9[and the evidence shall be taken down in accordance with such rule.]

Record of evidence
in High Court.

1. The words "or the Chief Court of Lower Burma" were repealed by S. 3 and Sch. II of the Repealing and Amending Act, 1923 (XI of 1923).

2. The words "unless he is a Presidency Magistrate" were omitted by S. 2 of the Code of Criminal Procedure (Second Amendment) Act, 1923 (XXCVII of 1923).

3. These words were substituted for the words and figures "or section 362, sub-section (2A)", *ibid.*

4. These words were inserted by S. 2 and Sch. of the Oudh Courts (Supplementary) Act, 1925 (XXXII of 1925).

5. The word "and" was omitted by the Lower Burma Courts Act, 1907 (VI of 1907). This Act has since been repealed by the Repealing and Amending Act, 1923 (XI of 1923).

6. The words "the Chief Court of the Punjab" were repealed by the Repealing and Amending Act, 1919 (XVIII of 1919).

7. The words "and the Chief Court of Lower Burma" were repealed by S. 3 and Sch. II of the Repealing and Amending Act, 1923 (XI of 1923).

8. This word was substituted for the word "may" by S. 99 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

9. These words were substituted for the words "and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed", *ibid.*

CHAPTER XXVI

OF THE JUDGMENT.

366. (1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced, or the substance of such judgment shall be explained,—

Mode of delivering judgment.

- (a) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and
- (b) in the language of the Court, or in some other language which the accused or his pleader understands :

Provided that the whole judgment shall be read out by the presiding Judge, if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted, in either of which cases it may be delivered in the presence of his pleader.

(3) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537.

367. (1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court¹ [or from the dictation of such presiding officer] in the language of the Court, or in English ; and shall contain the point or points for determination, the decision thereon and the reasons for the decision ; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it² [and where it is not written by the presiding officer with his own hand, every page of such judgment shall be signed by him].

Language of judgment ; contents of judgment.

1. These words were inserted by S. 100 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. These words were added, *ibid*.

S. 366.—Judgment delivered by President of Panchayat Court after other members had left is bad. 52 M. 237 also 53 M. 165. Where President is only dissenting member the judgment should be written by one of the majority. 51 M. 338. Where only three magistrates heard evidence but judgment was delivered by more held judgment illegal. 1930 M.W.N. 770 Cr. 6 ; 24 M.L.J. 862. Where Sessions Judge set out the opinion of the assessors and the fact that the accused are acquitted and later prefixed a document giving his reasons for the acquittal this irregularity is cured by S. 537 of this Code 45 Mad 918. (F.B.) but where judgment was written and delivered some days after accused were convicted and sentenced it is a defect which vitiates the conviction and sentence 27 Mad. 237. Judgment by Panchayat Board President when some alignment members refused to sign the same before closing of evidence is a nullity 1939 M.W.N. 618 Cr. 128.

S. 367.—Unnecessary scandalous or objectionable language may be expelled. Remarks on the evidence cannot be expunged except by way of appeal attacking the decision based upon that evidence 1930 M.W.N. 791 Cr. 183. In a case tried partly by Jury and partly by the Judge with assessors, in his judgment with regard to offences tried with assessors the Judge had not given any reasons why he agreed with the Jury on some points. This was not sufficient compliance of section A.I.R. 1927 Mad. 56. A magistrate is not bound to deliver judgment prepared and signed by his predecessor I.L.R. 40 Mad. 108.

(2) It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced.

(3) When the conviction is under the Indian Penal Code and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same and pass judgment in the alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(5) If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed.

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

¹ [(6) For the purposes of this section, an order under section 118 or section 123, sub-section (3), shall be deemed to be a judgment.]

See Criminal Rules of Practice Rule 73.

368 (1) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(2) No sentence of transportation shall specify the place to which the person sentenced is to be transported.

369. ² [Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court established by Royal Charter, by the Letters Patent of such High Court, no Court], when it has signed its judgment, shall alter or review the same, except ³ * * * to correct a clerical error.

370. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars:—

- (a) the serial number of the case;
- (b) the date of the commission of the offence;

1. This sub-section was added by S. 103 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. These words were substituted for the words "No Court other than a High Court" by S. 101, *ibid.*

3. The words and figures "as provided in sections 395 and 484 or" were omitted, *ibid.*

S. 369.—The Court becomes *functus officio* and has no power to review its judgment. Judgment means any judicial act when it finally disposes of the case and indicates the order of the Court when it is read out and signed by the Judge. 1926 M.W.N. 147. Order of dismissal in a Criminal Appeal or Criminal Revision Petition for default of appearance is not a judgment and the Court may rehear it. 46 Mad. 282. Where appellate Court in a Criminal Appeal failed to make an order under S. 520 it is a mere omission or slip. Similarly where the order is one under S. 517 and is omitted by a Criminal Court 1922 M.W.N. 494. An order to the prejudice of the accused without affording him an opportunity is void *ab initio* and the case can be reheard. 47 Mad. 428 following 46 Mad. 382 (*supra*). No subordinate Criminal Court can sit in revision upon its own record. If a mistake is made the matter must be referred to High Court 53 Mad. 870. An order of dismissal of complaint under S. 203 of the Code is not a judgment under this section 29 Mad. 126 (F.B.). So also an order of discharge under S. 253 of the Code 81 Mad. 543. Subordinate Criminal Courts cannot review their order under S. 522 of the Code 1943 M.W.N. 163 Cr. 28.

S. 370.—Omission by a Bench of Presidency Magistrates to record reasons for conviction and sentence of imprisonment in a case where no record is made of evidence is a grave irregularity to be interfered by High Court, 46 Mad. 253. followed in 1929 M.W.N. 891 Cr. 196 also A.L.R. 1924 Mad. 799. Magistrate should give brief reasons why defence evidence should be discredited and why he believes prosecution evidence 1942 M.W.N. 441 Cr. 117.

- (c) the name of the complainant (if any);
- (d) the name of the accused person, and (except in the case of an European British subject) his parentage and residence;
- (e) the offence complained of or proved;
- (f) the plea of the accused and his examination (if any);
- (g) the final order;
- (h) the date of such order; and
- (i) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

371. (1) On the application of the accused a copy of the judgment, or when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

Copy of judgment, etc., to be given to accused on application.

(2) In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall on the application of the accused, be given to him without delay and free of cost.

(3) When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Case of person sentenced to death.

372. The original judgment shall be filed with the record of proceedings, and, where the original is recorded in a different language from that of the Court and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Judgement when to be translated.

Court of session to send copy of finding and sentence to District Magistrate.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

CHAPTER XXVII

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court.

Sentence of death to be submitted by Court of Session.

375. (1) If when such proceedings are submitted the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

Power to direct further inquiry to be made or additional evidence to be taken.

(2) Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

(3) When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

Power of High Court to confirm sentence or annul conviction.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury the High Court—

- (a) may confirm the sentence, or pass any other sentence warranted by law, or
- (b) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or
- (c) may acquit the accused person :

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

Confirmation or new sentence to be signed by two Judges.

377. In every case so submitted, the confirmation of the sentence or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order under the seal of the High Court and attested with his official signature, to the Court of Session.

380. Where proceedings are submitted to a Magistrate of the first class or a Sub-divisional Magistrate as provided by section 562, such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

S. 380.—The S.D.M. to whom case is submitted under this section cannot make a reference to the District Magistrate but must dispose of the case himself 1940 M.W.N. 244 Cr. 44. The magistrate to whom the case is submitted cannot act aside the conviction but may make such enquiry or take such evidence as may assist him to exercise his discretion properly under S. 562 of the Code I.L.R. 1945 Mad. 891 also see 57 Mad. 85 = 1933 M.W.N. Cr. 104.

CHAPTER XXVIII.

OF EXECUTION.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Execution of order passed under section 376.

382. If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to transportation for life.

Postponement of capital sentence on pregnant woman.

383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to be, confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

Execution of sentences of transportation or imprisonment in other cases.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail, or other place in which the prisoner is, or is to be, confined.

Direction of warrant for execution.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant with whom to be lodged.

1[386. (1)] Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

Warrant for levy of fine.

- (a) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender,
- (b) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the moveable or immoveable property, or both, of the defaulter :

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(2) The ² [Provincial Government] may make rules regulating the manner in which warrant under sub-section (1), clause (a), are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

Ses Criminal Rules of Practice Rule 290 A

1. Section 386 was substituted by S. 102 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 386.—Attachment by actual seizure of joint moveables for delinquent co-sharers' fine is invalid 55 Mad. 1041. Attachment of standing crops by seizure for the fine of a member of Joint Hindu family is invalid 1936 M.W.N. 728 Cr 138.

(3) Where the Courts issue a warrant to the Collector under sub-section (1), clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of decrees shall apply accordingly :

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.]

387 ¹ [A warrant issued under section 386, sub-section (1), clause (a), by any Court] may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the ² [attachment] and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Suspension of execution of sentence of imprisonment.

388. (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may—

- (a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days, and
- (b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and if the amount of the fine or of any instalment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.]

Who may issue warrant.

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor in office.

1. These words and figures were substituted for the words "Such warrant" by S. 103 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. This word was substituted for the word "distress", *ibid.*

3. Section 389 was substituted by S. 9 of the Code of Criminal Procedure (Second Amendment) Act, 1928 (XXXVII of 1928).

Execution of sentence of whipping only.

390. When the accused is sentenced to whipping only, the sentence shall ¹[subject to the provisions of section 391] be executed at such place and time as the Court may direct.

See Criminal Rules of Practice Rule 286

Execution of sentence of whipping in addition to imprisonment.

391. (1) When the accused—

(a) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or

(b) is sentenced to whipping in addition to imprisonment,]

the whipping shall not be inflicted until fifteen days from the date of the sentence, or if an appeal is made within that time, until the sentence is confirmed by the Appellate Court, but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

(2) The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

(3) No accused person shall be sentenced to whipping in addition to imprisonment, when the term of imprisonment to which he is sentenced is less than three months.

392. (1) In the case of a person of or over sixteen years of age whipping shall be inflicted with a light rattan not less than half an inch in diameter, in such mode, and on such part of the person, as the ²[Provincial Government] directs; and, in the case of a person under sixteen years of age, it shall be inflicted in such mode, and on such part of the person, and with such instruments, as the ³[Provincial Government] directs.

Mode of inflicting punishment.

(2) In no case shall such punishment exceed thirty stripes ⁴[and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes].

Limit of number of stripes

See Criminal Rules of Practice Rule 286.

Not to be executed by instalments. Exemptions.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping, namely:—

(a) females;

(b) males sentenced to death or to transportation or to penal servitude or to imprisonment for more than five years;

(c) males whom the Court considers to be more than forty-five years of age.

1. These words and figures were inserted by S. 21 of the Criminal Law Amendment Act, 1923 (XII of 1923).

2. These clauses were substituted for the words "is sentenced to whipping in addition to imprisonment in a case which is subject to appeal" by S. 22, *ibid*.

3. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. These words were added by S. 7 of the Whipping Act, 1909 (IV of 1909.)

Whipping not to be inflicted if offender not in fit state of health.

394. (1) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

(2) If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Procedure of punishment cannot be inflicted under section 394.

395. (1) In any case in which, under section 391, sentence of whipping is wholly or partially prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months ¹ [or to a fine not exceeding five hundred rupees] which may be in addition to any other punishment to which he may have been sentenced for the same offence.

(2) Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term ¹ [or a fine of an amount] exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

396. (1) When sentence is passed under this Code on an escaped convict such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained take effect immediately, and, if of imprisonment, penal servitude or transportation shall take effect according to the following rules, that is to say:—

Execution of sentences on escaped convicts.

(2) If the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

(3) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation.—For the purposes of this section—

- (a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;
- (b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and
- (c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

1. These words were inserted by S. 105 of the Code of Criminal Procedure (Amendment) Act, 1933 (XVIII of 1933).

397. When a person already undergoing a sentence of imprisonment, penal servitude or transportation, is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced, 1 [unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence] :

Sentence on offender already sentenced for another offence.

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced :

2 [Provided, further, that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order the latter sentence shall commence immediately.]

398. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

Saving as to sections 396 and 397.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment or to a sentence of transportation or penal servitude for an offence punishable with imprisonment and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

399. (1) When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the 3 [Provincial Government] as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the 3 [Provincial Government] prescribes with regard to the discipline and training of persons confined therein.

Confinement of youthful offenders in reformatories.

(2) All persons confined under this section shall be subject to the rules so prescribed.

1. These words were inserted by S. 106 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. This proviso was added, *ibid.*

3. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 397.—Order under this section can only be made where it is possible to carry out both sentences concurrently. 1935 M.W.N. 949 Cr. 185 where accused serving sentence in default of furnishing security under S. 123 of the Code is convicted under S. 176 I.P.C. for offence committed prior case falls within the second proviso 1937 M.W.N. 95 Cr. 23 see also 1934 M.W.N. 928 Cr. 176. 1941 M.W.N. 1031. Cr. 155. Section is not applicable to sentences of detention under S. 8 Madras Borstal Schools Act, 1939 M.W.N. 352, Cr. 60.

(3) This section shall not apply to any place in which the Reformatory Schools Act, 1897, is for the time being in force.

400 When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

Return of warrant
on execution of sen-
tence.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES

1401. (1) When any person has been sentenced to punishment for an offence, ^{1*} the ³[Provincial Government] may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to ^{4*} the ³[Provincial Government] for the suspension or remission of a sentence, ^{1*} ^{5*} the ³[Provincial Government], may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion ⁶[and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists].

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of ^{4*} the ³[Provincial Government], ^{4*} ^{5*}, not fulfilled, ^{4*} the ³[Provincial Government] may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section, may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

⁷ [(4A) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.]

1. This section has been effected in regard to release of prisoners by S. 2 of the Punjab Good Conduct Prisoners' Probational Release Act, 1926 (Punjab Act X of 1926).

2. The words "the Governor-General in Council or" were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. The words "the Governor-General in Council or" were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

5. The words "as the case may be" were omitted, *ibid.*

6. These words were added by S. 107 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

7. Sub-section (4A) and (5A) were inserted, *ibid.*

(5) Nothing herein contained shall be deemed to interfere with the right of ¹[His Majesty or of the ²[Central Government]] when such right is delegated to ³[it]] to grant pardons, reprieves, respites or remissions of punishment.

⁴ [(5A) Where a conditional pardon is granted by His Majesty or, in virtue of any powers delegated to ³[it], by the ²[Central Government], any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly]

(6) The ⁵ * * * * ⁶ [Provincial Government] may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.

⁷ [402. (1)] The ⁸ * * * * ⁶ [Provincial Government] may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it :—

Power to commute punishment.	death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.
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⁹ [(2) Nothing in this section shall affect the provisions of section 54 or section 55 of the Indian Penal Code.]

¹⁰ [402-A. The powers conferred by sections 401 and 402 upon the Provincial Government may, in the case of sentences of death, also be exercised by the Governor-General in his discretion.]

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

403. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

Person once convicted or acquitted not to be tried for same offence.

1. These words were substituted for the words "Hér Majesty," by S. 107 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. These words were substituted for the words "Governor-General" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. This word was substituted for the word "him" *and*.

4. Sub-sections (4A) and (5A) were inserted, by S. 107 of Act XVIII of 1928.

5. The words "Governor-General in Council and the" were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

6. These words were substituted for the words "Local Government", *ibid*.

7. This section was re-numbered by S. 108 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

8. The words "Governor-General in Council or the" were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

9. This sub-section was added by S. 109 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

10. This section was inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

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(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897, or section 188 of this Code.

Explanation.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Illustrations.

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards while the acquittal remains in force, be charged with theft as a servant, or upon the same facts with theft simply, or with criminal breach of trust.

(b) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery—at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(c) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(d) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(e) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 8 of the section.

(f) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for robbery on the same facts.

(g) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

PART VII—Of Appeal, Reference and Revision.

CHAPTER XXXI.

OF APPEALS.¹

Unless otherwise provided no appeal to lie.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Appeal from order rejecting application for restoration of attached property.

405. Any person whose application under section 89 for the delivery of the property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order requiring security for keeping the peace or for good behaviour.

406. Any person who has been ordered under section 118 to give security for keeping the peace or for good behaviour may appeal against such order—

(a) if made by a Presidency Magistrate, to the High Court ;

(b) if made by any other Magistrate, to the Court of Session ;

1. For periods of limitation, see the Indian Limitation Act, 1908 (IX of 1908), S. 8 and Sch. I, second division.

2. Section 406 was substituted by S. 109 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

S. 404.—In deciding the forum of appeal the case of each appellant has to be considered for purposes of jurisdiction A.L.R. 1928 Mad. 95.

Provided that the 1 [Provincial Government] may, by notification in the 2 [official Gazette], direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the District Magistrate or a Presidency Magistrate shall lie to the District Magistrate and not to the Court of Session

Provided, further, that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3 A) of section 123]

Appeal from order refusing to accept or rejecting a surety [406A Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order —

- (a) if made by a Presidency Magistrate, to the High Court
- (b) if made by the District Magistrate, to the Court of Session or
- (c) if made by a Magistrate other than the District Magistrate, to the District Magistrate

407 (1) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 4 [or in respect of whom an order has been made or a sentence has been passed under section 380] by a Sub-divisional Magistrate of the second class may appeal to the District Magistrate

(2) The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the 1 [Provincial Government] to hear such appeals, and thereupon such appeal or class of appeals may be presented to such subordinate Magistrate, or if already presented to the District Magistrate The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 5 [or in respect of whom an order has been made or a sentence has been passed under section 380] by a Magistrate of the first class, may appeal to the Court of Session ,

Provided as follows —

6 * * * * *

1. These words were substituted for the words ' Local Government ' by the Government of India (Adaptation of Indian Laws) Order, 1937

2. These words were substituted for the words ' local official Gazette ' . *ibid*

3. Section 406 A was inserted by S 110 of the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923)

4. These words and figures were inserted by S 111 *ibid*

5. These words and figures were inserted by S 112 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

6. Clause (a) of the proviso to S. 408 was omitted by S. 23 of the Criminal Law Amendment Act, 1923 (XII of 1923).

S. 407.—Subsection (1) could not be applied to appeals under S 486 (1) of the Code 1941 M W N 1078 Cr 165.

S. 408.—Where second class magistrate was invested with first class powers before judgment was pronounced appeal lies only to Court of Session 61 Mad 27. When any of the accused has been sentenced for a period exceeding 4 years appeal of all the accused lies only to the High Court under sub-section (b) 1931 M W N. 1068 Cr 283.

(b) when in any case an Assistant Sessions Judge or a Magistrate specially empowered under section 80 passes any sentence of imprisonment for a term exceeding four years, or any sentence of transportation; the appeal¹ [of all or any of the accused convicted at such trial] shall lie to the High Court.

(c) when any person is convicted by a Magistrate of an offence under section 124-A of the Indian Penal Code, the appeal shall lie to the High Court.

Appeals to Court
of Session how
heard.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge :

² [Provided that an Additional Sessions Judge shall hear only such appeals as the ³ [Provincial Government] may, by general or special order, direct or as the Sessions Judge of the division may make over to him.]

Appeal from sen-
tence of Court of
Session.

410 Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the High Court.

Appeal from sen-
tence of Presidency
Magistrate

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court, if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

⁴ **[411-A.** (1) Without prejudice to the provisions of section 449 any person convicted on a trial held by a High Court in the exercise of its original criminal jurisdiction may, notwithstanding anything contained in section 418 or section 423, sub-section (2), or in the Letters Patent of any High Court, appeal to the High Court—

(a) against the conviction on any ground to appeal which involves a matter of law only ;

(b) with the leave of the appellate Court, or upon the certificate of the judge who tried the case that it is a fit case for appeal, against the conviction on any ground of appeal which involves a matter of fact only, or a matter of mixed law and fact, or any other ground which appears to the appellate Court to be a sufficient ground of appeal ; and

(c) With the leave of the appellate Court, against the sentence passed unless the sentence is one fixed by law.

(2) Notwithstanding anything contained in section 417, the Provincial Government may direct the Public Prosecutor to present an appeal to the High Court from any order of acquittal passed by the High Court in the

1. These words were inserted by S. 112 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. This proviso was added, by S. 114, *ibid.*

3. These words were substituted for the words " Local Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. This section was added by Act XXVI of 1943 Sec. 2.

S. 411 A.—In an appeal under this section sub clause (1) (b) the Court has full power to set aside the verdict of the Jury if it is convinced that the verdict is unreasonable 1946 M.W.N. Cr. 9.

exercise of its original criminal jurisdiction, and such appeal may, notwithstanding anything contained in section 418, or section 423, sub-section (2), or in the Letters Patent of any High Court, but subject to the restrictions imposed by clause (b) and clause (c) of sub-section (1) of this section on an appeal against a conviction, lie on a matter of fact as well as a matter of law.

(3) Notwithstanding anything elsewhere contained in any Act or Regulation, an appeal under this section shall be heard by a Division Court of the High Court composed of not less than two judges, being judges other than the judge or judges by whom the original trial was held, and if the constitution of such a Division Court is impracticable, the High Court shall report the circumstances to the Provincial Government which shall take action with a view to the transfer of the appeal under section 527 to another High Court.

(4) Subject to such rules as may from time to time be made by His Majesty in Council in this behalf, and to such conditions as the High Court may establish or require, an appeal shall lie to His Majesty in Council from any order made on appeal under sub-section (1) by a Division Court of the High Court in respect of which order the High Court declares that the matter is a fit one for such appeal.]

412. Notwithstanding anything heretofore contained, where an accused person has pleaded guilty and has been convicted by 1 [a High Court,] a Court of Session or any Presidency Magistrate or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in certain cases when accused pleads guilty.

413. Notwithstanding anything heretofore contained, there shall be no appeal by a convicted person in cases in which 2 [a High Court passes a sentence of imprisonment not exceeding six months only or of fine not exceeding two hundred rupees only or in which] a Court of Session 3 " " " passes a sentence of imprisonment not exceeding one month only or 4 [in which a court of Session or District Magistrate or other Magistrate of the first class passes a sentence] of fine not exceeding fifty rupees only 5 " " "

No appeal in petty cases.

Explanation.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.

414. Notwithstanding anything heretofore contained, there shall be no appeal by a convicted person in any case tried summarily, in which a Magistrate empowered to act under section 260 passes a sentence 6 " " " of fine not exceeding two hundred rupees only. 7 " " "

No appeal from certain summary convictions.

1. These words were added by Section 3. Act XXVI of 1949.
2. These words were inserted by Sec. 4 *ibid.*
3. The words "or the District Magistrate or other Magistrate of the first class" were omitted by S. 24 of the Criminal Law Amendment Act, 1923 (XII of 1923).
4. These words were inserted, *ibid.*
5. The words "or of whipping only" were omitted, *ibid.*
6. The words "of imprisonment not exceeding three months only, or" were omitted by S. 25 of the Criminal Law Amendment Act, 1923 (XII of 1923).

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Proviso to sections 413 and 414.

Explanation.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

1 **415A.** Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.]

Special right of appeal in certain cases.

416 [*Saving of sentences on European British subjects.*] *Repealed by S. 26 of Act XII of 1923.*

417. The ² [Provincial Government] may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

Appeal on behalf of Government in case of acquittal.

³ **418.** (1) An appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

Appeal on what matters admissible.

¹ Section 415A was inserted by S. 114 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

² These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

³ Section 414 was re-numbered by S. 115 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

S. 415.—When the section refers to two or more punishments it refers to two or more punishments of different kinds. There was no combination of punishments in one sentence within the meaning of the section 1939 Mad. 1035 (I.L.R.) over ruling 1936 M.W.N. 218 Cr. 87.

S. 417—The section gives full power to High Court to review at large the evidence upon which an order of acquittal is founded and to reach the conclusion the High Court has to consider such matters as (1) the views of trial Judge as to credibility of witnesses (2) presumption of innocence in favour of accused (3) the right of accused to the benefit of doubt and (4) the slowness of the appellate Court in disturbing findings of fact by trial judge who had the advantage of seeing the witnesses 1934 M.W.N. 1017 Cr. 198 (P.C.) The powers conferred by this section should be confined to cases in which lower Court has obstinately blundered and produced a result mischievous to the administration of justice and interests of public 1931 M.W.N. 105 (P.C.) referring to 81 L.W. 715.; 8 Pat. 496 and 16 All 212. Court not to allow appeal against acquittal merely because it would have come to contrary conclusion but only if lower court is manifestly wrong 1931 M.W.N. 729 Cr. 153 also A.I.R. 1930 Mad. 704; or erred in law 1933 M.W.N. 242 Cr. 31. S. 439 (6) will not apply to an appeal against acquittal. So accused shall not be entitled to show cause against his conviction but he can ask the Court to consider all the evidence before it and all the possible grounds which may be raised against his conviction 1938 M.W.N. 605 Cr. 125. Powers should be sparingly used A.I.R. 1939 Mad. 280. No appeal against acquittal should be filed in a case where accused in the lower court had to meet only lesser charge the P.P. conceding the serious charge 1931 M.W.N. 573 Cr. 198 *dissented to* in 1946 M.W.N. 345 (2). Under this section the High Court has full power to review at large all the evidence to reach its conclusion whether order of acquittal should be reversed 1945 M.W.N. 560 Cr. 108 (P.C.) following 1934 M.W.N. 1017 Cr. 106 (P.C.) (*Supra*).

¹[(2) Notwithstanding anything contained in sub-section (1) or in section 423, sub-section (2), when, in the case of a trial by jury, any person is sentenced to death, any other person convicted in the same trial with the person so sentenced may appeal on a matter of fact as well as a matter of law.]

Explanation.—The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such
Petition of appeal petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.
Procedure when appellant in jail.

See Criminal Rule of Practice Rules 287.

421. (1) On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering it may dismiss the appeal summarily :
Summary dismissal of appeal.

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

See Criminal Rules of Practice Rules 288, & 302.

422. If the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the ²[Provincial Government] may appoint in this behalf, of the time and place at which
Notice of appeal.

1. Sub-section (2) was added by S. 115 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 421.—Though not a rule of law it is a rule of caution that appeals should not be dismissed on being presented without being posted to a date for hearing and disposal. 58 Mad. 865 following 48 Mad. 385. Under this section the appellate court may dismiss the case summarily otherwise shall conform to the provisions of Sections 421 and 423. 1925 M.W.N. 469 Cr. 35 (P.C.) Where Jail appeal was dismissed in ignorance of an appeal by pleader the appeal should be reheard together 1945 M.W.N. 1061 Cr. 190. Where Jail appeal has been dismissed summarily it is a bar to a fresh appeal preferred through Counsel 46 Mad. 852 followed in 47 Mad. 428. Where case disposed of early in the morning and Counsel did not wilfully absent himself appeal should be restored 1937 M.W.N. 91 Cr. 19. Where appeal was presented and disposed of in same day in spite of request of advocate to get necessary papers the order on appeal must be set aside 1941 M.W.N. 64 Cr. 7.

S. 422.—In an appeal against award of compensation, the appellate Court should as a matter of caution to give notice to complainant 1934 M.W.N. 159 also 1930 M.W.N. 729 Cr. 117; 1943 M.W.N. 346 Cr. 61; Order of acquittal of accused without notice to Crown cannot be sustained 1941 M.W.N. 128 Cr. 31. but want of notice to complainant does not invalidate appellate order 1942 M.W.N. 125 Cr. 29. Non compliance with provisions of this section does not call for interference in revision by complainant. 1943 M.W.N. 227 Cr. 42.

such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal ;

and, in cases of appeals under 1[section 411A, sub-section (2), or section 417] the Appellate Court shall cause a like notice to be given to the accused.

See Criminal Rules of Practice Rules 38, 239 and 240.

423. (1) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under 1[section 411-A, sub-section (2), or section 417] the accused if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

- (a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law,
- (b) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or (2) alter the finding, maintaining the sentence, or with or without altering the finding, reduce the sentence, or (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but subject to the provisions of section 106, sub-section (3), not so as to enhance the same ;

1. These words were substituted by S. 2 of Act XXVI of 1943.

S. 423.—Appellate Court acting under sub section (b) in ordering retrial should not except under exceptional circumstances order that case originally tried with a Jury be retried by a Court acting without a Jury 1945 M.W.N. 649 Cr. 121. (P.C.) Retrial on the ground of superficial enquiry and non examination of witnesses 1934 M.W.N. 402 Cr. 74 also 1930 M.W.N. 191 Cr. 47. Retrial cannot be ordered in order that a fresh charge on the facts must be framed and prosecution continued thereon 1932 M.W.N. 114 Cr. 18. Appellate Court cannot usurp the functions of the Public Prosecutor in supplying deficiencies 1930 M.W.N. 1215 Cr. 279. If Appellate Court is silent after reversing the finding it is deemed to be an acquittal. 1938 M.W.N. 224 Cr. 32. Appellate Court cannot modify a conviction under Ss. 147 and 323 into one under S. 323 read with S. 149 I.P.C. 1933 M.W.N. 910 Cr. 155. also a conviction under S. 411 I.P.C. into the under S. 409 read with S. 109 I.P.C. 1938 M.W.N. 223 Cr. 39. Also sentence of rigorous imprisonment into one of fine after part of sentence was undergone 1933 M.W.N. 1268 Cr. 400. Appellate Court can only impose sentence impossible by the lower Court 1936 M.W.N. 1982 Cr. 242; 1937 M.W.N. 743 Cr. 163. Appellate Court cannot order a *de novo* enquiry under S. 107 Cr. P. Code 1933 M.W.N. 241 Cr. 38. Appellate Court has jurisdiction to pass order under S. 520 of the Code under sub-section 1 (d) 1934 M.W.N. 956 Cr. 180. Appeal arising out of S. 476 B of the Code in respect of a civil proceeding Court can remand the case under (c) and (d) 1933 M.W.N. 1476 57 Mad. 177. (F.B.) The appellate cannot interfere with conviction in a Jury case even if there is other evidence but can only order a retrial 1935 M.W.N. 643 Cr. 107. Appellate Court cannot quash conviction in another charge sheet not under appeal 1935 M.W.N. 816 Cr. 143. Appellate Court may itself rectify error in conviction 1931 M.W.N. 890 Cr. 162. In an appeal under S. 417 where there is no legal trial the appellate may order a retrial 39 Mad. 527 (F. B.). Where magistrate convicted accused of two distinct offences but passed one sentence for both and appellate Court acquitting accused of one offence but maintaining the sentence is illegal 30 Mad. 48. Where records were destroyed since filing of appeal, in the lower Court the proper procedure is to order a retrial 1943 M.W.N. 72 Cr. 28. Sub sec. (1) (d) gives ample powers to the appellate Court to amend the charge even to include persons not before the Court much more when no prejudice to the appellant 1944 M.W.N. 23 Cr. 23 (P.C.) Appellate Court cannot alter a conviction under S. 323 and 147. I.P.C. into one under S. 160 I.P.C. 47 Mad. 61. Alteration of R.I. for 8 months into one month B.I. and fine is valid 1949 M.W.N. 896 Cr. 200. An order to collect court fees from accused passed by appellate Court is not enhancement 47 Mad. 914. It is desirable that the records of lower court be perused before notice for enhancement is sent 53 Mad. 585. Retrial should not be ordered unless there is reasonable opportunity of accused being convicted on the evidence available 50 Mad. 274.

(c) in an appeal from any other order, alter or reverse such order ;

(d) make any amendment or any consequential or incidental order that may be just or proper.

(2) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

424 The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court.

Judgments of subordinate Appellate Courts.

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

425. (1) Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

Order by High Court on appeal to be certified to lower Court.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court, and, if necessary, the record shall be amended in accordance therewith.

426. (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

Suspension of sentence pending appeal. Release of appellant on bail

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

(3) When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

1 [(2-A) Where any person other than a person accused of a non-bailable offence is sentenced to imprisonment by a Court and an appeal lies from that sentence, the Court may, if the convicted person satisfies that he intends to present an appeal, order that he be released on bail for a period sufficient in the opinion of the Court to enable him to present the appeal and obtain the orders of the Appellate Court under sub-section (1) and this sentence of imprisonment, shall, so long as he is so released on bail, be deemed to be suspended.]

1. This sub-section was added by Act II of 1945.

S. 424.—Appellate Court need not set out *in extenso* the statement in the lower Court's judgment in an agreeing judgment 1931 M.W.N. 119 Cr. 15. The appellate judgment should bring out the fact that the appellate Court has brought its mind to bear upon all the points raised. 1935 M.W.N. 658 Cr. 117; also 1935 M.W.N. 1092 Cr. 189. Failure to assign reasons for the conclusions arrived at by the appellate Court invalidates the order 1943 M.W.N. 746 Cr. 170. Failure of deceased magistrate to write judgment necessitates rehearing of appeal 1943 M.W.N. 818 Cr. 185.

¹ [(2B) Where a High Court is satisfied that a convicted person has been granted special leave to appeal to His Majesty in Council against any sentence which it has imposed or maintained, or has been granted leave to appeal to His Majesty in Council against an order of the Federal Court on an appeal from the High Court involving the imposition or maintenance of a sentence it may if it so thinks fit order that pending the appeal the sentence or order appealed against be suspended, and also, if the said person is in confinement, that he be released on bail.]

427. When appeal is presented under section ² [411-A, sub-section (2), or section 417] the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Arrest of accused
in appeal from
acquittal.

428. (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons, and may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

Appellate Court
may take further
evidence or direct
it to be taken.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV, as if it were an inquiry.

429. When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure where
Judges of Court of
Appeal are equally
divided.

430 Judgment and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

Finality of orders
on appeal.

431. Every appeal under section ¹ [411-A, sub-section (2), or section 417] shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

Abatement of
appeals.

1. Sub-section 2B was inserted by section 2 of Act IV of 1946.

2. These words were substituted by section 2 of Act XXVI of 1948.

S. 428.—The provisions of this section apply to appeals against order for compensation under S. 250 of the Code 1930 M.W.N. 594 Cr. 194. The section is not limited to cases of formal evidence but apply even to explain defence evidence 1928 M.W.N. 777. The section may not be invoked where the Prosecution has failed to prove case but to supply a defect in formal proof 42 Mad. 885. see also A.I.R. 1925 Mad. 106. The appellate Court cannot order additional evidence in respect of new offence substituted for offence appealed against 54 Mad. 63. Evidence of Karnam turned hostile in Committing Court to whom deceased is alleged to have mentioned the culprit's name may be taken as additional evidence 1931 M.W.N. 731 Cr. 165. Additional evidence cannot be ordered in case where evidence not available to the prosecution even at trial 1985 M.W.N. 183 Cr. 38 also 1936 M.W.N. 1149 Cr. 209.

CHAPTER XXXII.

OF REFERENCE AND REVISION.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference and, pending such decision may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

Reference by
Presidency Magis-
trate to High
Court.

433. (1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Disposal of case
according to deci-
sion of High Court

(2) The High Court may direct by whom the costs of such reference shall be paid.

Direction as to
costs.

434. [*Power to reserve questions arising in original jurisdiction of High Court; Procedure when question reserved*]. Omitted by Section 6 of Act XXVI of 1943.

435. (1) The High Court or any Sessions Judge or District Magistrate or any Sub-divisional Magistrate empowered by the Provincial Government in this behalf, may call for and examine the record of any proceeding, before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court² [and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record].

Power to call for
records of inferior
Courts.

³ [*Explanation.*—All Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 437.]

(2) If any Sub-divisional Magistrate acting under sub-section (1) considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

* * * * *

(4) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words were added by S. 116 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

3. This explanation was added, *ibid.*

4. Sub-section (3) was omitted, *ibid.*

S. 435.—Section applies to all proceedings in a pending trial at any stage 47 Mad. 722 also 39 Mad. 564 'Made' in subsection (4) means not only made but entertained and decided 54 Mad. 842. No proceedings under the Indian Printing Presses and Newspapers Act and Indian Press Act relating to forfeiture are revisable under this section 48 Mad. 146. (P.C.) Under this section Court is bound to examine propriety of finding *s.s.* that there is no violation of natural justice 38 Mad. 1091. The court may interfere in revision when misappreciation of evidence has led to an incorrect order 33 Mad. 214. Enquiry under Police Order No. 157 against a Police officer is revisable 1943 M.W.N. 706 Cr. 170.

1 [436.] On examining any record under section 435 or otherwise, the High Court or the Sessions Judge may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any ² [person accused of an offence] who has been discharged.

3 [Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.]

4 [437.] When, on examining the record of any case under section 435 or otherwise, the Sessions Judge or District Magistrate considers that such case is triable exclusively by the Court of Sessions and that an accused person has been improperly

¹ This section which was originally numbered 437 was renumbered 436 by S. 117, of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

² These words were substituted for the words "accused person", *ibid*.

³ This proviso was added by S. 117 *ibid*.

⁴ This section which was originally numbered 436 was re-numbered 437, *ibid*.

S. 436.—An order of discharge cannot be set aside unless there is error in procedure or failure to decide the fundamental issue in the case 1936 M.W.N. 751 Cr. 147. also if two views of evidence are possible and neither view can be said to be unreasonable no interference with discharge 1937 M.W.N. 332 Cr. 60. Order of further enquiry in a case where there is reasonable doubt as to the *mala fides* of the accused is to be set aside 1937 M.W.N. 871 Cr. 175. In directing further enquiry it is illegal to direct framing of a charge and disposal thereon 1940 M.W.N. 536 Cr. 76. also 32 M. 220 F.B. Pendency of civil suit between the parties does not affect the order for further enquiry 1911 M.W.N. 1191 Cr. 259. Nor does different conclusion of Civil Court 1931 M.W.N. 740 Cr. 148. Enquiry not to be ordered where accused was discharged of a technical offence and there is a civil remedy available 1935 M.W.N. 654 Cr. 118. also in cases of a trivial nature committed sometime back 1945 M.W.N. 817 Cr. 145. Material consideration is the interests of the public in ordering further enquiry 1934 M.W.N. 1096 Cr. 208. A Dt. Magistrate cannot pass an order to restore a complaint dismissed by sub-magistrate but only asking him to make further enquiry 1937 M.W.N. 1212 Cr. 258. magistrate holding further enquiry can frame charge and proceed to trial 1934 M.W.N. 102 Cr. 90. A charge framed by a sub Magistrate cannot be quashed under this section 1941 M.W.N. 677 Cr. 81. An order under this section does not come within the proviso if accused merely appeared in answer to a notice sent to him in lieu of a summons after magistrate is satisfied about the complaint 49 Mad. 918 (F.B.) Further inquiry may be directed by a different magistrate 32 Mad. 22. (*supra*). Discharge means discharge under Ss. 209, 258 and 259 of the Code 33 Mad. 85.

S. 437.—Where committal is ordered, in a case where case of only some of the accused came up for revision before the Dt. Magistrate, in respect of all the accused such order is to be set aside in respect of those accused who had no notice 48 Mad. 871. Where Sessions Judge granted pardon to one of the accused and on the strength of the statement made by him commit the accused then and there for an offence for which he has not been committed already such order of committal is invalid as it is not based on examination of the records of the case 1932 M.W.N. 1162 Cr. 288. 'Improperly discharged' means where magistrate has discharged without taking a reasonable view of the circumstances not always a lenient view 1937 M.W.N. 1240 Cr. 266. Where Sub-magistrate took cognizance on police charge sheet under Ss. 351 and 323 I.P.C. but no charge was made under Ss. 376 and 511 I.P.C. but Dt. Magistrate purporting to act under this section directed the Sub-magistrate to commit the accused under section 76 and 511 I.P.C. District Magistrate has no jurisdiction to pass such order 41 Mad. 932. Sessions Judge cannot direct committal to Sessions of accused discharged in preliminary enquiry into offences under section 193 and 171 I.P.C. such offences not exclusively triable by Sessions Court. 42 Mad. 561 also 1929 M.W.N. 709 Cr. 157. Refusal of Dt. Magistrate to commit accused to Sessions while charge against him is still under enquiry does not bar Sessions Judge to order committal of accused to Sessions after discharge by inferior magistrate 43 Mad. 330. An order of Sessions Judge under this section may be quashed by High Court in revision 27 Mad. 51. Though not under S. 215. 90 Mad. 924. In case of enquiry into an offence under S. 307 I.P.C. magistrate framed charges under Sections 147, 323 and 325 I.P.C. Additional Dt. Magistrate competent to commit accused to Sessions under S. 307. I.P.C. 1945 M.W.N. 433 Cr. 85.

discharged by the inferior Court, the Sessions Judge or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion, of the Sessions Judge or District Magistrate, improperly discharged :

Provided as follows :—

- (a) that the accused has had an opportunity of showing cause to such Judge or Magistrate why the commitment should not be made.
- (b) that, if such Judge or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Judge or Magistrate may direct the inferior Court to enquire into such offence.

438. (1) The Sessions Judge or District Magistrate may, if he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond.

(2) An additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him ¹ [by or under any general or special order of the Sessions Judge].

See Criminal Rules of Practice Rule 265.

439. (1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections ²*, 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence, and when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

1. These words were substituted for the words "by the Sessions Judge" by S. 118 of the Code of Criminal Procedure (Amendment) Act, 1929 (XVIII of 1929).

2. The figures "193" were omitted by S. 119 *ibid*.

S. 438.—This section does not permit a reference to the District Magistrate to have an order of acquittal set aside in the absence of an appeal by the Provincial Government 38 Mad. 1028. also 1938 M.W.N. 878 Cr. 129; 1934 M.W.N. 947 Cr. 175. Sessions Judge cannot delegate his powers of deciding whether there shall be a case or not to the Additional Sessions Judge to whom the case was not transferred 1935 M.W.N. 459 Cr. 75. A reference with recommendation for enhanced sentence must be rejected 1934 M.W.N. 1198; Cr. 210.

S. 439.—The High Court has no jurisdiction under sub-section (1) to convert a finding of acquittal into one of conviction this prohibition does not refer only to cases where trial has ended in a complete acquittal of accused of all charges 1948 M.W.N. 749 (P.C.) distinguishing 87 Mad. 119. Also 50 M. 259. A person who has to show cause under sub-section (6) has the same rights as an appellant under S. 428 and so cannot go into facts on which he has been convicted by a Jury 59 Mad. 904. Under this section the High Court does not possess only the powers of an appellate Court enumerated therein but wider powers to redress a wrong or to do complete justice at any stage 47 Mad. 722. Though ordinarily a Court will not interfere in revision with findings of fact yet where no appeal lies there is some difference 1937 M.W.N. 51 Cr. 11. In revision conviction cannot be set aside in reliance on inadmissible evidence has been admitted if there is other evidence 1931 M.W.N. 1067 Cr. 231. So also in case where inadmissible evidence is admitted by preliminary enquiry 58 Mad. 490. The High Court will not interfere in revision on a question of admissibility of evidence in the middle of a trial by lower Court. 1936 M.W.N. 1094 Cr. 194.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

(4) Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

¹ [(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction.]

Optional with
Court to hear parties

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision :

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439 sub-section (2).

1. This sub-section was added, by S. 119 of the (Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928)).

S. 439.—The High Court will not interfere in revision if there is no real prejudice to the accused 1935 M.W.N. 1227 Cr. 220 An ex-parte order under S. 144 of the Code is revisable under this section 1930 M.W.N. 811 Cr. 185 1930 M.W.N. 849 Cr. 198 also 1934 M.W.N. 742 Cr. 150. High Court will interfere in revision where magistrate had no good reasons for not issuing process to accused but not merely because the magistrate has not given any reason 1938 M.W.N. 973 Cr. 177. No interference in revision merely because the magistrate refused permission to compound offence unless it is improperly refused 1933 M.W.N. 245 Cr. 27. Section applies only to Criminal cases and does not apply to orders of Civil Court refusing sanction to prosecute under S. 476 of the Code 1940 M.W.N. 472 Cr. 61 (F.B.) = I.L.R. 1940 Mad. 762 over ruling I.L.R. 1939 Mad. 439. An order for return of property can be revised only where the magistrate exercised his discretion on a wrong principle 1937 M.W.N. 53 Cr. 18. High Court can enhance sentence after notice on hearing appeal against conviction 1935 M.W.N. 177 Cr. 33 (P.C.) But High Court will not ordinarily interfere with discretion of Sessions Judge in and enhance sentence 1938 M.W.N. 1420 Cr. 224 in murder cases see also 1934 M.W.N. 958 Cr. 182. Unless sentence is so inadequate to offend ordinary notions of justice the Court will not also in enhance sentence 1936 M.W.N. 523 Cr. 90 also 171. In enhancement application the accused and the Court may go into facts 1936 M.W.N. 1145 Cr. 205. General rule is that no revision will ordinarily lie against acquittal much more when there is civil remedy 1937 M.W.N. 19 Cr. 3. Order of Village Panchayat is not revisable 1938 M.W.N. 728 Cr. 116. Order under S. 86 Legal Practitioners Act is not revisable. I.L.R. 1938 Mad. 988. Discharge for want of written complaint under S. 196 1 (b) is revisable 1941 M.W.N. 222 Cr. 18. Revision lies if it transpires that at the time of the commission of the act it did not amount to an offence even if this plea was not taken in the lower courts 1943 M.W.N. 343 Cr. 71. In a revision revising illegal order of magistrate under S. 562 of the Code accused is not entitled to agitate findings of fact 1943 M.W.N. 340 Cr. 68.

441. When the record of any proceeding of any Presidency Magistrate is called by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue, and the Court shall consider such statement before overruling or setting aside the said decision or order.

442. When a case is revised under this Chapter by the High Court, it shall, in manner hereinafter provided by section 425, certify its decision or order to the Court or Magistrate by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate by which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

PART VIII—Special Proceedings.

CHAPTER XXXIII.

SPECIAL PROVISIONS RELATING TO CASES IN WHICH EUROPEAN AND INDIAN BRITISH SUBJECTS ARE CONCERNED.

443. (1) Where, in the course of the trial outside a Presidency-town of any offence punishable with imprisonment, the accused person, at any time before he is committed for trial under section 213 or is asked to show cause under section 242 or enters on his defence under section 256 as the case may be, claims that the case ought to be tried under the provisions of this Chapter, the Magistrate inquiring into or trying the case, after making such inquiry as he thinks necessary, and after allowing the accused person reasonable time within which to adduce evidence in support of his claim, shall, if he is satisfied—

- (a) that the complainant and the accused persons or any of them are respectively European and Indian British subjects or Indian and European British subjects or
- (b) that, in view of the connection with the case of both an European British subject and an Indian British subject, it is expedient for the ends of justice that the case should be tried under the provisions of this Chapter.

record a finding that the case is a case which ought to be tried under the provisions of this Chapter, or, if he is not so satisfied, record a finding that it is not such a case.

1. Chapter XXXIII (sections 443 to 449) was substituted for original Chapter XXXIII (sections 443 to 463) by S. 27 of the Criminal Law Amendment Act, 1928 (XII of 1928).

S. 441.—Section is not to enable magistrates to give fresh reasons for their decisions contradictory to those already given but to enable them to supply reasons where they have given no reasons 1929 M.W.N. 998. Cr. 197.

(2) Where the Magistrate rejects the claim, the person by whom it was made may appeal to the Sessions Judge, and the decision of the Sessions Judge thereon shall be final and shall not be questioned in any Court in appeal or revision.

(3) Where the Magistrate rejects the claim, he shall stay the proceedings until the expiration of the period allowed for the presentation of the appeal or, if an appeal is presented, until it has been decided.

444. For the purposes of section 443, "complainant" means any person making a complaint or, in relation to any case of which cognizance is taken under clause (b) of section 190, sub-section (1), any person who has given information relating to the commission of the offence within the meaning of section 154.

Provided that a Public Prosecutor, a Public servant, a member, officer or servant of any local authority, a railway servant as defined in section 3 of the Indian Railways Act, 1890, or an officer or servant of any company, association or other body to which the ¹ [Provincial Government] may, by general or special order published in the ² [official Gazette], declare the provisions of this section to apply, shall not, by reason only of the fact that he has made a complaint of, or given information of, an offence in his capacity as such Public Prosecutor, public servant, railway servant, member, officer or servant, be deemed to be a complainant within the meaning of this section, nor shall a police-officer be so deemed by reason only of the fact that a report under section 173 relating to a case has been made by or through him.

445. (1) Where a Magistrate or a Sessions Judge decides under section 443 that a case ought to be tried under the provisions of Chapter and the case is a summons-case, the Magistrate trying the same shall direct that the case be referred to a Bench of two Magistrates and shall send a copy of such order to the District Magistrate who shall forthwith provide for the constitution of a Bench of two Magistrates of the first class, of whom one shall be an European and the other an Indian, for the trial of the case.

(2) Where the Magistrates constituting the Bench by which a case is tried under this section differ in opinion, the case, together with their opinions thereon, shall be laid before the Sessions Judge, who may examine any party or recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall thereafter pass such judgment, sentence or order in the case as he thinks fit and as is according to law.

(3) Any person convicted by a Bench under this section shall have the same right of appeal as if he had been convicted by a Magistrate of the first class, and any person convicted by a Sessions Judge under sub-section (2) shall have the same right of appeal to the High Court as if he had been convicted by the Sessions Judge at a trial held by the Sessions Judge under this Code.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words were substituted for the words "local official Gazette". *ibid.*

(4) In any case in which it is impracticable to constitute a Bench in accordance with the provisions of sub-section (1) in any district, the District Magistrate shall transfer the case for trial by a like Bench to such other district as the High Court may, by general or special order, direct.

(5) Notwithstanding anything contained in this section, the ¹ [Provincial Government] may, by notification in the ² [official Gazette], direct that all summons-cases tried under the provisions of this Chapter in any district specified in the notification shall be tried as if they were warrant-cases in accordance with the provisions hereinafter in this Chapter laid down for the trial of warrant-cases.

446. (1) Where a Magistrate or a Sessions Judge decides under section 443 that a case ought to be tried under the provisions of this Chapter and the case is a warrant-case, the Magistrate inquiring into or trying the case shall, if he does not discharge the accused under section 209 or section 253, as the case may be, commit the case for trial to the Court of Session, whether the case is or is not exclusively triable by that Court.

(2) Where an accused is committed to the Court of Session under sub-section (1), the Court shall proceed to try the case as if the accused had required to be tried in accordance with the provisions of section 275, and the provisions of that section and the other provisions of Chapter XXIII, so far as they are applicable, shall apply accordingly :

Provided that where the trial before the Court of Session would in the ordinary course be with the aid of assessors and the accused, or all of them jointly, require to be tried in accordance with the provisions of section 284A, the trial shall be held with the aid of assessors all of whom shall, in the case of European British subjects, be person who are Europeans or Americans or, in the case of Indian British subjects, be Indians.

447. If at any stage of an inquiry or trial under this Code it appears to the Magistrate that the case is or might be held to be a case which ought to be tried under the provision of this Chapter, he shall forthwith inform the accused person of his rights under this Chapter.

448. [*References to Sessions Judge to be construed as references to High Court in Rangoon*]. *Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.*

449. (1) Where—

- (a) a case is tried by jury in a High Court or Court of Session under the provisions of this Chapter, or
- (b) a case which would otherwise have been tried under the provisions of this Chapter is under this Code committed to or transferred to the High Court and is tried by jury in the High Court, or
- (c) a case is tried by jury in the High Court in a presidency-town and the High Court grants leave to appeal on the ground that the case would, if it had been tried outside a presidency-town, have been triable under the provisions of this Chapter,

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words were substituted for the words "local official Gazette", *ibid.*

then, notwithstanding anything contained in section 418 or section 423, sub-section (2), or in the Letters Patent of any High Court, an appeal may lie to the High Court on a matter of fact as well as on a matter of law.

(2) Notwithstanding anything contained in the Letters Patent of any High Court, the ¹[Provincial Government] may direct the Public Prosecutor to present an appeal to the High Court from an original order of acquittal passed by the High Court in any such trial as is referred to in sub-section (1).

(3) An appeal under sub-section (1) or sub-section (2) shall, where the High Court consists of more than one Judge, be heard by two Judges of the High Court.

450 to 463. ² [Repealed.]

CHAPTER XXXIV.

LUNATICS.

464. (1) When a magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the ³[Provincial Government] directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

⁴[(1A) Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with the provisions of section 466.]

(2) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he ⁵[shall record a finding to that effect and] shall postpone further proceedings in the case.

465. (1) If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury, or the Court with the aid of assessors, shall, in the first instance, try the fact of such unsoundness and incapacity ⁶[and if the jury or Court, as the case may be, is satisfied of the fact, the Judge shall record a finding to that effect and shall postpone further proceedings in the case and the jury, if any, shall be discharged].

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. See the footnote to Chapter XXXIII *supra*.

3. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. This sub-section was inserted by S. 120 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

5. These words were inserted, *ibid*.

6. These words were substituted for the words "and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed" by S. 121, *ibid*.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

466. (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, ¹ [whether the case is one in which bail may be taken or not], may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Release of lunatic pending investigation or trial.

² [(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the ³ [Provincial Government] :

Custody of lunatic.

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the ⁴ [Provincial Government] may have made under the Indian Lunacy Act, 1912.]

See Criminal Rules of Practice, Rule 127.

467 (1) Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

Resumption of inquiry or trial.

(2) When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

468. (1) If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

Procedure on accused appearing before Magistrate or Court.

(2) If the Magistrate or Court considers the accused ^{4*} to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be, ⁵ [and if the accused is found to be of unsound mind and incapable of making

1. These words were substituted for the words "if the case is one in which bail may be taken" by S. 123 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. This sub-section was substituted. *ibid.*

3. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. The word "person" was omitted by S. 123 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

5. These words were added, *ibid.*

S. 468.—Where accused is mentally defective unable to follow proceedings against him the Court is bound to follow the procedure under this section 1925 M.W.N. 814 Cr. 142.

his defence, shall deal with such accused in accordance with the provisions of section 466].

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

When accused appears to have been insane.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

Judgment of acquittal on ground of lunacy

471. (1) Whenever ¹[the finding] states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be ²[detained] in safe custody in such place and manner as the Magistrate or Court thinks fit. ³[and shall report the action taken to the ⁴[Provincial Government]]

⁵ * * *

Person acquitted on such ground to be detained in safe custody.

⁶ [Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the ⁷ [Provincial Government] may have made under the Indian Lunacy Act, 1912.]

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1. These words were substituted for the words "such judgment" by S. 124, of Act XVIII of 1928.

2. This word was substituted for the word "kept", *ibid.*

3. These words were inserted, *ibid.*

4. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order 1937.

5. The words "and shall report the case for the orders of the Local Government" were repealed by S. 3 and Second Schedule of the Repealing and Amending Act, 1914 (X of 1914).

6. This proviso was inserted by S. 121 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

7. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

8. Original sub-sections (2) and (3) of section 471 were repealed by the Indian Lunacy Act, 1912 (IV of 1912).

S. 471.—Section does not compel the Court to send accused to Lunatic Asylum. The Court is only to see to sufficient safeguards to see that the accused does not commit any mischief 1928 M.W.N. 10.

Power of Provincial Government to relieve Inspector General of certain functions.

1[(2)] The 2 [Provincial Government] may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or this section, to discharge all or any of the functions of the Inspector General of Prisons under 3 * * section 473 or section 474.

472. *Lunatic prisoners to be visited by Inspector-General.* [Repealed by Act IV of 1912.]

473. If such person is 4 [detained] under the provisions of section 466, and 5 [in the case of a person detained in a jail, the Inspector General of prisons or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them] shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic prisoner is reported capable of making his defence.

474. (1) If such person is 6 [detained] under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be 7 [released] without danger of his doing injury to himself or to any other person, the 2 [Provincial Government] may thereupon order him to be 7 [released] or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

Procedure where lunatic detained under sections 466 or 471 is declared fit to be released.

(2) Such Commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the 2 [Provincial Government], which may order his 8 [release] or detention as it thinks fit.

9 [475. (1) Whenever any relative or friend of any person detained under the provisions of section 466 or section 471 desires that he shall be delivered to his care and custody, the 2 [Provincial Government] may, upon the application of such relative or friend and on his giving security to the satisfaction of such 2 [Provincial Government] that the person delivered shall—

Delivery of lunatic to care of relative or friend.

(a) be properly taken care of and prevented from doing injury to himself or to any other person, and

1. Original sub-section (4) was renumbered " (2) " by S. 121 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. These words were substituted for the words " Local Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. The word and figures " section 472 " were repealed by S. 3 and Sch. II of the Repealing and Amending Act, 1914 (X of 1914).

4. This word was substituted for the word " confined " by S. 125 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

5. These words were substituted for the words " such Inspector-General or visitors ", *ibid.*

6. This word was substituted for the word " confined " by S. 126 *ibid.*

7. This word was substituted for the word " discharge ".

8. This word was substituted for the word " discharge " *ibid.*

9. Section 475 was substituted by S. 127, *ibid.*

(b) be produced for the inspection of such officer, and at such times and places, as the ¹ [Provincial Government] may direct, and

(c) in the case of a person detained under section 466, be produced when required before such Magistrate or Court,

order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in sub-section (1), clause (b), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production, the Magistrate or Court shall proceed in accordance with the provisions of section 468, and the certificate of the inspecting officer shall be receivable as evidence.]

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

² [476. (1) When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in section 195, sub-section (1), clause (b) or clause (c), which appears to

Procedure in cases mentioned in section 195.

1. These words were substituted for 'the words " Local Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. Sections 476, 476-A 476-B were substituted for S. 476 by S. 128 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

S. 476.—'Court' in S. 195 includes the High Court as represented by the Chief Justice I.L.R. 1937 Mad. 612. Where accused made false statement in his written statement even if the legal representatives of the petitioner (deceased) did not press for preferring complaint, Court can still go on 1936 M.W.N. 991 Cr. 179. The Sessions Judge can file complaint in a case where the witness gave contradictory statements in trial and committal court. 1911 M.W.N. 1061 Cr. 425; 1932 M.W.N. 721 Cr. 160. 55 Mad. 586. It is not necessary that magistrate should complain 1931 M.W.N. Cr. 225 (*Supra*), dissenting from 1932 M.W.N. Cr. 160 (*supra*) Offence committed in relation to a proceeding includes perjury in statement under S. 161. 1933 M.W.N. 100 Cr. 12 1933 M.W.N. 901 Cr. 146. 1933 M.W.N. 896 Cr. 141. Petition to the District Magistrate to direct further investigation into the death of his brother alleging conspiracy and murder found later to be false, no complaint lies from the District Magistrate 1936 M.W.N. 492 Cr. 84. The court complaining must state an express finding that it is expedient to order an enquiry into the case complained of, 1934 M.W.N. 192 Cr. 89. 1934 M.W.N. 1081 Cr. 221 56 Mad. 157; 1934 M.W.N. 928 Cr. 171. Not applicable to a departmental enquiry 1940 M.W.N. 805 Cr. 189. Does not apply to Village Courts Act 1934 M.W.N. 895 Cr. 68; 59. Mad. 165. Dismissal of application by a party does not preclude Court from taking action on a second application. 1931 M.W.N. 1048 Cr. 212 1936 M.W.N. 1939; Cr. 923. Where case was taken or file after police investigation and accused discharged thereon, subsequent complaint under this section is not justifiable 1941 M.W.N. 461 Cr. 45 Magistrate who makes the complaint must consider whether complaint is necessary in the interests of justice and not the magistrate who entertains such complaint. 1942 M.W.N. 594 Cr. 188. In a case sent to the S. D. M. under Police Standing Order 187 a complaint by the S. D. M. as a 'Court', is without Jurisdiction 1945 M.W.N. 431 Cr. 83; Sessions Judge cannot direct Additional District Magistrate to prefer a complaint 1931 M.W.N. 713 Cr. 137. He cannot himself afterwards direct a complaint 1931 M.W.N. 1155 Cr. 263. " Any offence referred to in S. 195 " incorporate conditions laid down in S. 193 and Court can take action under this section only under such conditions 42 M. 540 (F.B.) Complaint may be filed and prosecution ordered even 6 months after trial 1938 M.W.N. 100 Cr. 12. (*Supra*).

have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearances of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate:

1 [Provided that, where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.]

For the purposes of this sub-section, a ² * Presidency Magistrate shall be deemed to be a Magistrate of the first class.

(2) Such Magistrate shall thereupon proceed according to law as if upon complaint made under section 200.

(3) Where it is brought to the notice of such Magistrate or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided.]

3 [476A. The power conferred on Civil, Revenue and Criminal Courts by section 476, sub-section (1), may be exercised, in respect of any offence referred therein and alleged to have been committed in or in relation to any proceeding in any such Court, by the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), in any case in which such former Court has neither made a complaint under section 476 in respect of such offence nor rejected an application for the making of such complaint; and, where the superior Court makes such complaint, the provision of section 476 shall apply accordingly.]

Superior Court may complain where subordinate Court has omitted to do so.

3[476B. Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under section 476 or section 476A, or against whom such a

Appeals.

1. This proviso was added by S. 6 of the Code of Criminal Procedure (Amendment) Act, 1926 (II of 1926).

2. The word "Chief" was omitted, *ibid.*

3. Sections 476, 476A and 476B were substituted for S. 476 by S. 128 of the Code of Criminal Procedure (Amendment) Act. 1928 (XVIII of 1928).

S. 476B.—An appeal lies from an order of Sub-judge sanctioning prosecution to the District Judge and not to the High Court. 1933 M.W.N. 1280 Cr. 212. Section is not exhaustive of all the powers of the appellate Court in the case of a complaint under this section. The appellate Court has power of remand and also of summary trial. 1938 M.W.N. 902 Cr. 146. 1938 M.W.N. 1476 Cr. 237 (F.B.) But appellate Court has no power to direct that the Lower Court should go on with an application which has wrongfully been dismissed. 1931 M.W.N. 1051 Cr. 215 also 87 Mad. 177. No appeal lies against refusal of a public servant to file a complaint under S. 168 I.P.C. 1939 M.W.N. 119 Cr. 7. Section requires the appellate Court in a reversing judgment that the prosecution is expedient in the interests of justice. 1933 M.W.N. 1257 Cr. 189. Appellate Court has no power to send the appeal to a Subordinate Magistrate 1944 M.W.N. 584 Cr. 188. Where P.P. filed four petitions and the Sessions Judge disposed of all petitions one appeal by all the petitioners was not competent, 1933 M.W.N. 100 Cr. 12. A complaint made by a Court on appeal under this section from an order of Subordinate Court refusing to make a complaint does not fall within either 476 or 476-A. No appeal lies under this section from order of Appellate Court making the complaint, 51 Mad. 777.

complaint has been made, may appeal to the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, itself make the complaint which the subordinate Court might have made under section 476, and if it makes such complaint the provisions of that section shall apply accordingly.]

477. (*Power of Court of Session as to such offences committed before itself.*) Repealed by S. 129 of Act XVIII of 1923.

478. (1) When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

(2) For the purposes of an inquiry under this section the Civil or Revenue Court may * * * exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII² [and of Chapter XXXIII in cases where that Chapter applies] and shall be deemed to have been held by a Magistrate.

479. When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorised to commit for trial, and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

480. (1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender * * * to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

1. These words and figures "subject to the provisions of section 448" were omitted by S. 29 of the Criminal Law Amendment Act, 1923 (XII of 1923).

2. These words and figures were inserted, *ibid*.

3. These words "whether he is a European British subject or not" were omitted by S. 29 of the Criminal Law Amendment Act 1923 (XII of 1923).

(2) Nothing in ¹ [section 29A or in Chapter XXXIII] shall be deemed to apply to proceeding under this section.

481. (1) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(2) If the offence is under section 228 of the Indian Penal Code, the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

482. (1) If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate, to whom any case is forwarded under this section, under this section, shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

483. When the ²[Provincial Government] so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877³ shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

484. When any Court has under section 480 ⁴[or section 482] adjudged an offender to punishment ⁴[or forwarded him to a Magistrate for trial] for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

485. If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by

1. These words and figures were substituted for the words and figures, "section 448 of section 444", by S. 29 of Act XII of 1923.

2. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. See now the Indian Registration Act, 1908 (XVI of 1908).

4. These words were inserted by S. 2 and First Schedule of the Repealing and Amending Act, 1914 (X of 1914).

5. **482.**—Where order to produce records was made by Sub-Court and defendant did not produce same and later the Sub-court was abolished the District Court to which the file was transferred could not lay complaint. 1940 M.W.N. 240 Cr. 40.

warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document or thing. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

486. (1) Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

Appeals from convictions in contempt cases.

(2) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes in a presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situated.

(4) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the presidency-towns, to the High Court.

487 (1) Except as provided in sections 1^a * 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court 2^a * * *, shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

(2) Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

488. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance

Order for maintenance of wives and children.

1. Figures "477" were omitted by S. 130 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. These words "and the Recorder of Rangoon" were repealed by the Lower Burma Courts Act, 1900 (VI of 1900). This Act has since been repealed by the Repealing and Amending Act, 1928 (XI of 1928.)

of his wife or such child, at such monthly rate, not exceeding ¹[one hundred] rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

(2) Such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance.

(3) If any person so ordered ²[fails without sufficient cause] to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fine, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment is sooner made :

Enforcement of order.

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, may make an order under this

1. These words were substituted for the word " fifty " by S. 131 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. These words were substituted for the words " wilfully neglects " ibid.

S. 488.—An order of maintenance will not be available for a Malabar woman whose sambandam has not been legally recognised as a marriage and her offspring would be entitled to maintenance only if mother's tarwad is unable to maintain them 1933 M.W.N. 1276 Cr. 208 also 1911 M.W.N. 674 Cr. 78 Adiravida wife of a Naidu husband is entitled 1931 M.W.N. 185 Cr. 33, also 1935 M.W.N. 1339 Cr. 219. Dancing girl once dedicated to temple and married by Sangham is entitled to maintenance 1937 M.W.N. 735 Cr. 159. Adoptive father is not liable to maintain adopted child I.L.R. 1937 Mad. 775. Children of Muhammadan wife are entitled to maintain even though the wife has refused to live with her husband 1937 M.W.N. 565 Cr. 125. Neglect includes act of a father compromising the claim of his children for maintenance by asking third party to execute a promissory note for the amount to the mother but not seeing that the consideration reached her 1937 M.W.N. 935 Cr. 201. Under this section the Court has jurisdiction to award more than Rs. 100 for the maintenance for wife and daughter if both are to be maintained I.L.R. 1938 Mad. 729 overruling 1937 M.W.N. 1127 Cr. 231 approving 49 Mad. 891 Under Sub-section (3) the Court has to find out whether the person ordered to pay maintenance has or has not fulfilled the order with or without sufficient cause. Neither protection order nor adjudication in insolvency would affect the order I.L.R. 1940 Mad. 692 Maintenance order in favour of wife will not bring the order automatically to end if wife returns to live with her husband I.L.R. 50 Mad. 663 followed in A.L.R. 1927 Mad. 1148. Court making an order for maintenance cannot refuse to enforce it on the ground that the counter petitioner resides outside the jurisdiction 52 Mad. 77. ' Means ' in the section is not confined to visible means like real property or employment 1926 M.W.N. 146. Unable to maintain includes physical as well as pecuniary inability, 1924 M.W.N. 305 following 39 Mad. 947. Wife's refusal to live with husband is justifiable if husband is keeping a concubine in his own house. Nothing in sub-section (8) authorises a magistrate to arbitrate between the parties 1937 M.W.N. 984 Cr. 203. Living in adultery in sub-section (4) is different from leading an unchaste life as a plea against award of maintenance 1937 M.W.N. 1181 Cr. 235 Living in adultery involves continuous adulterous conduct on or about the date of the application I.L.R. 1935 Mad. 1100. Ill-treatment by husband may be taken into consideration under proviso to Sub-section (3) 1935 M.W.N. 476 Cr. 92. Wife cannot exact promise of sexual fidelity before she returns to live with him 1937 M.W.N. 1197 Cr. 245. Where wife refuses to live in a separate room and is offered food and clothing she is not entitled to maintenance 56 Mad 918. Apprehension of physical cruelty may be a just ground for refusal but not the mere fact that the husband has married again 1939 M.W.N. 1355 Cr. 199 also 1944 M.W.N. 598 Cr. 184. Decree of Civil Court as to maintenance bars the jurisdiction of magistrate under this section. 1936 M.W.N. 524 Cr. 92. Delay in filing petition is no ground for refusal of maintenance 1936 M.W.N. 1130 Cr. 198. Indebtedness of the husband is not a ground for refusing maintenance to wife 1941 M.W.N. 668 Cr. 72. Section does not limit the right of maintenance to minors so long as they are unable to maintain themselves 1941 M.W.N. 479 Cr. 50. Question of custody of child need not be gone into in awarding maintenance for child 1942 M.W.N. 581 Cr. 126. ' Resides ' means the place of permanent residence and not of casual visit. 1942 M.W.N. 869 Cr. 73 Refusal to live with husband suffering from venereal disease is a valid ground 1948 M.W.N. 689 Cr. 169. Adulterous wife in custody of child can draw maintenance for the child 1948 M.W.N. 584 Cr. 144. Maintenance includes necessary medical expenses in case of a sick wife 1943 M.W.N. 152 Cr. 26. ' Talak pronounced in wife's absence but communicated to her later disentitles her to maintenance from that date 1944 M.W.N. 64 Cr. 40.

section notwithstanding such offer, if he is satisfied that there is just ground for so doing :

1[Provided, further, that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.]

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(6) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases :

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any orders so made may be set aside for good cause shown on application made within three months from the date thereof.

2 * * * *

3 [(7)] The Court in dealing with applications under this section shall have power to make such order as to costs as may be just,

4 [(8)] 5 [Proceedings under this section may be taken against any person] in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child.

6 [489. (1)] On proof of a change in the circumstance of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit: Provided that if he increases the allowance the monthly rate of 7 [one hundred] rupees in the whole be not exceeded.

8 [(2)] Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 488 should

1. This proviso was added by S. 131 of Act XVIII of 1923.

2. Original sub-section (7) was omitted *ibid*.

3. The original sub-section (8) was re-numbered (7), *ibid*.

4. The original sub-section (9) was re-numbered (8), *ibid*.

5. These words were substituted for the words "The accused may be proceeded against", *ibid*.

6. The section was re-numbered by S. 132, *ibid*.

7. These words were substituted for the word "fifty", *ibid*.

8. This sub-section was added, *ibid*.

S. 489.—Divorce does not constitute change in the circumstance 1933 M.W.N. 794 Cr. 121 also 1913 M.W.N. 127 Cr. 15. Alteration includes cancellation of maintenance as in the case of daughter getting married and able to maintain herself 48 Mad. 503.

be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.]

490 A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

CHAPTER XXXVII,

DIRECTIONS OF THE NATURE OF A *HABEAS CORPUS*.

Power to issue directions of the nature of a *habeas corpus*.

491. (1) ¹[Any High Court] may, whenever it thinks fit, direct—

- (a) that a person within the limits of its ²[appellate criminal jurisdiction] be brought up before the Court to be dealt with according to law;
- (b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;
- (c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;
- (d) that a prisoner detained as aforesaid be brought before a Court-martial or any commissioners ³* * * * * for trial or to be examined touching any matter pending before such Court-martial or commissioners, respectively;
- (e) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and
- (f) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

(2) ⁴[The High Court] may, from time to time, frame rules to regulate the procedure in cases under this section.

(3) Nothing in this section applies to persons detained under the Bengal State Prisoners Regulation, 1818, Madras Regulation II of 1819, or Bombay

1. These words were substituted for the words "Any of the High Court of Judicature at Fort William, Madras and Bombay" by S. 30 of the Criminal Law Amendment Act, 1923 (XII of 1923).

2. These words were substituted for the words "ordinary original civil jurisdiction", *ibid.*

3. The words "acting under the authority of any commission from the Governor-General in Council" were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. These words were substituted for the words "Each of the said High Courts" by S. 30 of the Criminal Law Amendment Act, 1923 (XII of 1923).

S. 490.—Second Class magistrate has no power to sentence a person to imprisonment under this section 1924 M.W.N. 922 Cr. 170.

S. 491.—The jurisdiction of the High Court to issue the common law writ of *habeas corpus* is substituted by S. 491 Cr. P. C. and to be exercised by a bench of two Judges 1 L.R. 1929 Mad. 744 (P.C.) affirming 1 L.R. 1939 Mad. 708 and reversing 1938 M.W.N. 1161 Cr. 205. Proceedings under this section are not available for going behind an order appointing a guardian for minors 54 Mad. 759. The High Court has no jurisdiction to award costs under this section 55 Mad. 1019 (F. B.)

Regulation ~~XXXV~~ of 1827, or the State Prisoners Act, 1850, or the State Prisoners Act, 1858.

1[491A. Any High Court established by Letters Patent may exercise the powers conferred by section 491 in the case of any European British subject within such territories, other than those within the limits of its appellate criminal jurisdiction, as the "[Central Government] may direct.]

Power of High Court outside the limits of appellate jurisdiction.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

492 (1) The ^{3*} * * * * "[Provincial Government] may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

Power to appoint Public Prosecutors.

(2) ^{5*} * * The District Magistrate, or subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below "[such rank as the "[Provincial Government] may prescribe in this behalf] to be Public Prosecutor for the purpose of "[any case].

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein, under his directions.

Public Prosecutor may plead in all Courts in cases under his charge. Pleaders privately instructed to be under his direction.

494. Any Public Prosecutor ^{8*} * * may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any

Effect of withdrawal from prosecution.

1. Section 491-A was inserted by S. 31 of the Criminal Law Amendment Act, 1928 (XII of 1928).

2. These words were substituted for the words "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. The words "Governor General in Council or the" were omitted, *ibid.*

4. These words were substituted for the words "Local Government", *ibid.*

5. The words "In any case committed for trial to the Court of Session" were omitted by S. 133 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

6. These words were substituted for the words "the rank of Assistant District Superintendent", *ibid.*

7. These words were substituted for the words "such case", *ibid.*

8. The words "appointed by the Governor General in Council or the Local Government" were omitted by S. 134, of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

S. 494.—Duties of Public Prosecutor under this section 1938 M.W.N. 581 Cr. 102 also 1939 M.W.N. Cr. 135. The fact that the prosecution evidence if believed would sustain a conviction is not the only ground for refusing withdrawal, A.I.R. 1926 Mad. 296.

person ¹[either generally or in respect of any one or more of the offences for which he is tried] ; and upon such withdrawal,—

- (a) if it is made before a charge has been framed, the accused shall be discharged ²[in respect of such offence or offences] ;
- (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted ²[in respect of such offence or offences].

495. (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below the rank to be prescribed by the ³[Provincial Government] in this behalf ⁴ * * * but no person, other than the Advocate General, Standing Council, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the ³[Provincial Government] in this behalf, shall be entitled to do so without such permission.

(2) Any such officer shall have the like power of withdrawing from the prosecution as is provided by section 494, and the provisions of that section shall apply to any withdrawal by such officer.

(3) Any person conducting the prosecution may do so personally or by a pleader.

(4) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation in to the offence with respect to which the accused is being prosecuted.

See Rule 48 Criminal Rules of Practice

CHAPTER XXXIX.

OF BAIL.

496. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail :

Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided :

⁵[Provided, further, that nothing in this section shall be deemed to affect the provisions of section 107, sub-section (4), or section 117, sub-section (3).]

1. These words were inserted by S. 134 of Act, XVIII of 1928.

2. These words were added, *ibid*.

3. These words were substituted for the words " Local Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. The words " with the previous sanction of the Governor General in Council " were omitted by S. 2 and Sch. I of the Devolution Act, 1920 (XXXVIII of 1920).

5. This proviso was added by S. 185 of the Code of Criminal Procedure Amendment Act, 1928 (XVIII of 1928).

S. 496.—Magistrate has no discretion but must grant bail if accused are willing to execute bonds for their appearance 1942 M.W.N. 749 Cr. 173.

497. (1) When any person accused of any non-bailable offence is

When bail may be taken in case of non-bailable offence arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of ¹ [an offence punishable with death or transportation for life] :

²[Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.]

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a ³[non-bailable offence], but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

⁴[(3) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.]

⁵[(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody on the execution by him of a bond without sureties for his appearance to hear judgment delivered.]

⁶[(5) A High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.]

498. The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

Power to direct admission to bail or reduction of bail.

499. (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

Bond of accused and sureties.

1. These words were substituted for the words "the offence of which he is accused" by S. 136 of Act XVIII of 1928.

2. This proviso was added, *ibid.*

3. These words were substituted for the words "such offence," *ibid.*

4. This sub-section was inserted, *ibid.*

5. This sub-section was inserted, *ibid.*

6. This sub-section was substituted for original sub-section (5), *ibid.*

S. 497.—Sub-section (5) has no application to bail granted by High Court under Section 498 of the Code 1945 M.W.N. 485 Cr. 87.

S. 498.—High Court has no power to grant bail to persons convicted by the High Court pending appeal to Privy Council 1945 M.W.N. 326 Cr. 69. (P.C.) ; Now has got such power under S. 496 (2-B) of the Code as inserted by Section 2 of Act IV of 1946.

(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

500. (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

Discharge from custody.

(2) Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

501. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

Power to order sufficient bail when that first taken is insufficient.

502. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

Discharge of sureties.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

CHAPTER XL.

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

503. (1) Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

When attendance of witness may be dispensed with.

Issue of commission and procedure thereunder.

1 [(2) When the witness resides in an Indian State the commission may be issued to the Officer, who is, for the time being, the Political Agent for such State, and when the witness resides in a Tribal Area, the commission may be issued to the Officer exercising the powers of a District Magistrate in or in relation to such Area.]

1. This sub-section was substituted by S. 2 (a). Act XXVII of 1948

¹ [(2-A) When the witness resides in British Burma, the commission may be issued to any District Magistrate or Magistrate of the first class within the local limits of whose jurisdiction in British Burma such witness resides.]

(3) The Magistrate or officer to whom the commission is issued, or if he is the District Magistrate, he, or such Magistrate, of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

² [(4) Where the commission is issued to such officer as is mentioned in sub-section (2) he may, in lieu of proceeding in the manner laid down in sub-section (3) —

(a) delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in British India, or

(b) where the commission is for the examination of a witness residing in an Indian State; forward it for execution to the State Court, if any, recognised by the Crown Representative by notification in the official Gazette as a Court to which commissions may be forwarded under this sub-section, within the local limits of whose jurisdiction the witness resides.]

504. (1) If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to ³[such Presidency Magistrate], who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

(Commission in case of witness being within presidency-town.

⁴ [(1-A) When a commission is issued under this section to a Chief Presidency Magistrate, he may delegate his powers and duties under the commission to any Presidency Magistrate subordinate to him.]

(2) Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the Slave Trade Act, 1876, section 3.

505 (1) The parties to any proceeding under this Code in which a commission is issued, may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and ⁴ [except in a case to which clause (b) of sub-section (4) of section 503 applies,] the Magistrate or officer to whom the commission is directed, ⁵ [or to whom the duty of executing such commission has been delegated] shall examine the witness upon such interrogatories ⁶ [in a case to which clause (b) of sub-section (4) of section 503 applies, the officer to whom the commission is issued shall forward such interrogatories to the Court to which he forwards the commission for execution].

1. This was added by S. 2 of the Code of Criminal Procedure Amendment Act. (Act, XXXV. of 1940.)

2. This sub-section was substituted by S. 2 (b) of Act XXVII of 1943.

3. These words were substituted for the words "the said Presidency Magistrate" by S. 137 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

4. This sub-section was inserted. *ibid.*

5. These words were added by S. 3 (a) of Act XXVII of 1943.

6. These words were inserted by S. 136 of Act XVIII of 1928.

(2) Any such party may appear before such Magistrate or ¹ [except in a case to which clause (b) of sub-section (4) of section 503 applies, before such] officer by pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application ; and the District Magistrate may either issue a commission in the manner hereinbefore provided or reject the application.

Power of Provincial subordinate to apply for issue of commission.

507. (1) After any commission issued under section 503 or section 506 has been duly executed ¹ [or in a case to which clause (b) of sub-section (4) of section 503 applies, has been again received by the officer by whom it was forwarded to the State Court,] it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Return of commission.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872, may also be received in evidence at any subsequent stage of the case before another Court.

508. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Adjournment of inquiry or trial.

2 [508A. The provisions of sub-section (3) of section 503, sub-sections (1) and (1-A) of section 504 and so much of sections 505 and 507 as relates to the execution of a commission and its return by the Magistrate or officer to whom the commission is directed shall apply in respect of commissions issued by a Magistrate or Court in British Burma under the law in force in British Burma relating to Commissions for the examination of witnesses, as they apply to commissions issued under section 503 or section 506.]

Application of this Chapter to commissions issued in British Burma.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

509. (1) The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under Chapter XL, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

Deposition of medical witness.

1. These words were added by Act XXVII of 1948.

2. This section was added by S. 3 of the Code of Criminal Procedure (Amendment) Act, 1940 (XXXV of 1940).

Power to summon
medical witness.

(2) The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

510. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Report of Chemical Examiner.

511. In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for time being in force—

Previous acquittal
how proved.

(a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order, or,

(b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered ;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

512. (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

Record of evidence
in absence of accused.

(2) If it appears that an offence punishable with death or transportation has been committed by some person or persons unknown, the High Court may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of British India.

Record of evidence when offender unknown.

CHAPTER XLII.

PROVISIONS AS TO BONDS.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government

Deposit instead
of recognisance.

S. 512.—Prosecution must prove death of witness before his deposition taken in the absence of the accused is tendered 1988 M.W.N. 582 Cr. 102.

promissory notes to such amount as the Court or officer may fix, in lieu of executing such bond.

1 514. (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the ² [attachment] and sale of the moveable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the ³ [attachment] and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond ^{3*} * *.

⁴ [(7) When any person who has furnished security under section 106 or section 118 or section 562 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 514-B, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.]

1. S. 514 applies to all cases requiring security for good behaviour under S. 6 of the Punjab Frontier Crossing Regulation, 1873 (VII of 1873).

2. This word was substituted for the word "distress" by S. 139 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

3. The words "but the party who gave the bond may be required to find a new surety" were omitted by S. 139 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

4. This sub-section was inserted, *ibid*.

S. 514.—Where bond was taken on granting adjournment under S. 526 (8) to enable party to move High Court for transfer but in fact District Magistrate was moved in absence of *malafides* full forfeiture is not called for 1934 M.W.N. 269 Cr. 53. No adjournment need necessarily be granted to enable the surety to show cause against forfeiture. An accused who has voluntarily joined the army is as good as an absconder 1943 M.W.N. 389 Cr. 57.

1 [514-A.] When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 514, the Court by whose order such bond was taken, or a Presidency Magistrate or Magistrate of the first class, may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and, if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.]

Procedure in case of insolvency or death of surety or when a bond is forfeited.

Bond required from a minor.

1 [514-B.] When the person required by any Court or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.]

Appeal from, and revision of orders under section 514.

515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate, shall be appealable to the District Magistrate, or if not so appealed, may be revised by him.

Power to direct levy of amount due on certain recognizances.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

3[516A.] When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.]

Order for custody and disposal of property pending trial in certain cases.

517. (1) When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal ³[by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise] of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

Order for disposal of property regarding which offence committed.

1. Sections 514-A and 514-B were inserted by S. 140 of Act XVIII of 1939.

2. Section 516A was inserted by S. 141, *ibid.*

3. These words were inserted by S. 142, *ibid.*

S. 517.—In a case where Court finds that no case is made out against the accused property should be returned to party from whom it was seized unless it is palpable it does not belong to him. The mere fact that there are rival claimants does not take this out of the rule 1930 M.W.N. 1106 Cr. 250 also 60 M. 916; 1932 M.W.N. 106 Cr. 10. Departure from this rule must be made for reasons to be recorded 1932 M.W.N. 813 Cr. 177. also 1938 M.W.N. 88 Cr. 1. An order in the property register not made at the time of delivery of judgment is bad, 1939 M.W.N. 740 Cr. 104. Where hides and cart carrying the hides were confiscated in respect of an offence under S. 65 of the City Police Act, the cart may be delivered to accused after inquiry 1948 M.W.N. 714 Cr. 178. Section applies to coins seized from a hoarder under Rule 93 of the D.O.I. Rules, 1948 M.W.N. 716 Cr. 180, but not under Rule 81 of the D.O.I. Rules 1914 M.W.N. 558 Cr. 120. Notice should ordinarily be given before reversing on appeal an order passed under this section 46 Mad. 162. Property regarding which an offence has been committed includes moveables in getting possession of which any offence is ultimately committed 51 Mad. 606.

(2) When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

1[(3) When an order is made under this section such order shall not, except where the property is livestock or subject to speedy and natural decay, and save as provided by sub-section (4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of.]

1(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal.]

Explanation.—In this section the term “property” includes in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchanged, whether immediately or otherwise.

518 In lieu of itself passing an order under section 417, the Court may direct the property to be delivered to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

Order may take form of reference to District or Sub-divisional Magistrate.

519. When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has brought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

Payment to innocent purchaser of money found on accused.

520. Any Court of appeal, confirmation, reference or revision may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just.

Stay of order under section 517, 518 or 519.

1. These sub-sections were inserted, by S. 142 of Act XVIII of 1928.

S. 520.—The Sessions Judge has no jurisdiction to pass an order under this section in an appeal from the Sub Divisional Magistrate who interfered only with regard to conviction and declined to interfere with an order under S. 517 made by the Sub Magistrate 1924 M.W.N. 806. Where accused was acquitted and a revision against the order of acquittal by a sub-magistrate was dismissed by the High Court and an appeal was preferred against the order of the Sub-magistrate returning the property to the Sub Divisional Magistrate the appeal is not valid as appeal only lay against the order to the Dt. Magistrate 1928 M.W.N. 557 (F.B.) Additional District Magistrate has no jurisdiction to hear such appeal 1928 M.W.N. 683, but if the application with regard to property was not filed independently than the Additional District Magistrate is competent to make an order under the powers conferred by S. 10 (2) A.L.R. 1930 Mad. 769.

521. (1) On a conviction under the Indian Penal Code, section 292, section 293, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

Destruction of libellous and other matter.

(2) The Court may, in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

522. (1) Whenever a person is convicted of an offence attended by criminal force ¹[or show of force or by criminal intimidation] and it appears to the Court that by such force ¹[or show of force or criminal intimidation] any person has been dispossessed of any immovable property, the Court may, if it thinks fit, ¹[when convicting such person or at any time within one month from the date of the conviction] order ²[the person dispossessed] to be restored to the possession of the same.

Power to restore possession of immoveable operty.

(2) No such order shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

³[(3) An order under this section may be made by any Court of appeal, confirmation, reference or revision.]

523. (1) The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

Procedure by police upon seizure of property under section 51 or stolen.

1. These words were inserted by S. 143 of the Code of Criminal Procedure (Amendment) Act, 1938 (XVIII of 1938).

2. These words were substituted for the words "such person", *ibid.*

3. This sub-section was added, *ibid.*

S. 521.—Destruction whole book containing only some defamatory articles not called for I.L.R. 1940 Mad. 958.

S. 522.—Where property was taken under claim of right property so taken by violence should be restored to person from whom it was taken 1913 M.W.N. 168 Cr. 38 Section applies to cases where criminal force was used against a person and not to inanimate objects 1913 M.W.N. 130 Cr. 18. Limitation of one month runs in the case of a stay after the stay has been vacated 1944 M.W.N. 486 Cr. 108.

S. 523.—Commissioner of Police can exercise power under this section but this power must be exercised judicially 1932 M.W.N. 105 Cr. 10 Where jewel was recovered from a person and a charge sheet filed against an absconding accused in respect of same the magistrate on an application by the complainant enquire and make an order under this section 1932 M.W.N. 1345 Cr. 989. Where on a complaint by a person of theft of some articles belonging to him and another (accused) the complaint was thrown out the property seized from the accused must be returned to him and not to complainant 1939 M.W.N. 739 Cr. 103. Where police investigated into a case which later turned out to be a noncognisable offence and police filed thereon a referred charge sheet the magistrate has discretion as to disposal of property under this section 1941 M.W.N. 224 Cr. 20. Where plea of the accused is that certain goods were planted on him the magistrate cannot order the articles to be returned to the accused. If magistrate is unable to find out who is entitled to the goods an issue of proclamation under sub-section (2) is to be resorted to 1942, 2 M.L.J. 728.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

524. (1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found, is unable to show that it was legally acquired by him, such property shall be at the disposal of the 1[Provincial Government], and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the 2[Provincial Government] in this behalf.

(2) In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

525. If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, 3 [or if the Magistrate] to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, 4[or that the value of such property is less than ten rupees] the Magistrate may at any time direct it to be sold; and the provisions of section 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case or itself try it.

526. (1) Whenever it is made to appear to the High Court :—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

1. These words were substituted for the word "Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words were substituted for the words "Local Government" *ibid.*

3. These words were substituted for the words "or the Magistrate" by S. 144 of the Code of Criminal Procedure (Amendment) Act. 1928 (XVIII of 1928).

4. These words were inserted, *ibid.*

S. 526.—District Judge opining that there was a *prima facie* case when he dismissed an appeal preferred against the order of District Munsiff according sanction to filing of a complaint is a ground for having trial transferred to the file of another Sessions Judge 1934 M.W.N. 362 Cr. 158. Where magistrate dismissed complaint in one and retained the other on his file in respect of case and counter case transfer is called for 1937 M.W.N. 998 Cr. 314 also 1941 M.W.N. 844 Cr. 116. Where magistrate issued a non-bailable warrant in a bailable offence and framed fresh charge on which the case was not posted this is a fit case for transfer. 1938 M.W.N. 1437 Cr. 331. Refusal of adjournment on the ground of sudden bereavement to counsel is a ground for transfer. 1935 M.W.N. 815 Cr. 148.

- (b) that some question of law of unusual difficulty is likely to arise, or
- (c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or
- (d) that an order under this section will tend to the general convenience of the parties or witnesses, or
- (e) that such an order is expedient for the ends of justice, or is required by any provision of this Code; it may order—
 - (i) that any offence be inquired into or tried by any Court not empowered under section 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;
 - (ii) that any particular ¹ * case or appeal, or class of ² * cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;
 - (iii) that any particular ¹ * case or appeal be transferred to and tried before itself; or
 - (iv) that an accused person be committed for trial to itself or to a Court of Session.

(2) When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation.

1. The word "criminal" was omitted by S. 145, of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. The word "such" was omitted *ibid*.

S. 526.—Report called for in connection with allegations made in support of application for transfer is not made in judicial capacity. Right to file affidavits in support of such allegations is given by S. 539-A of the Code 1937 M.W.N. 328 Cr. 56. Where proceedings are in enquiry stage magistrate is not bound to grant adjournment for applying to High Court for transfer, 1934 M.W.N. 719 Cr. 151. No application for transfer would be entertained at the stage of dismissal of complaint under S. 203 of the Code, 1935 M.W.N. 643 Cr. 107. Where transfer petition was filed in the High Court before stipulated date but returned by office for representation this was no ground for forfeiture of the bond 1937 M.W.N. 576 Cr. 136. Where a Bench of Magistrates at the inception of complaint are not seized of case and they ask the Joint Magistrate to invest them with powers this is sufficient to cause apprehension in the minds of the accused to justify a transfer 1935 M.W.N. 1227 Cr. 219. In adjourning a case under sub-section (8) no day on which could be awarded 1 L.R. 1912 Mad. 661. The fact that the magistrate before whom complaint is laid has no jurisdiction to try the case 1942 M.W.N. 593 Cr. 137. Sessions Judge refused adjournment under Sub-section (9) on the accused making an application that he is moving the High Court on a question of wrongful reception of evidence under S. 88 I.E.A. Such refusal is wrong, but remediable under S. 537 in the absence of failure of justice 1948 M.W.N. 706 Cr. 170. Court's refusal to adjourn case where intimation of intention to apply for a transfer and application for adjournment were made just before judgment is pronounced as pronouncing judgment is no part of trial 54 Mad. 855. 'Party interested' in the section does not mean necessarily a complainant but may include a police informant 2. Mad. Cr. Cases 199 A.L.R. 1939 Mad. 844.

(5) When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if ¹ [so ordered], pay ² [any amount which the High Court ³ [may under this section award by way of compensation] to the person opposing the application].

(6) Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

⁴[(6A) Where any application for the exercise of the power conferred by this section is dismissed, the High Court may if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of ⁵[compensation] to any person who has opposed the application ⁶[such sum not exceeding two hundred and fifty rupees as it may consider proper in the circumstances of the case].]

(7) Nothing in this section shall be deemed to affect any order made under section 197.

⁷[(8) If in any inquiry under Chapter VIII or Chapter XVIII or in any trial, any party interested intimates to the Court at any stage before the defence closes its case that he intends to make an application under this section, the Court shall, upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred rupees, that he will make such application within a reasonable time to be fixed by the Court, adjourn the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon :

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party, or, where an adjournment under this sub-section has already been obtained by one of several accused, upon a subsequent intimation by any other accused.]

⁸[(9) Notwithstanding anything hereinbefore contained, a Judge presiding in a Court of Session shall not be required to adjourn a trial under sub-section (8) if he is of opinion that the person notifying his intention of making an application under this section has had a reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it.]

⁹[*Explanation*.—Nothing contained in sub-section (8) or sub-section (9) restricts the powers of a Court under section 344].

1. These words were substituted for the words " convicted, by S. 145 of Act XVIII of 1923.

2. These words were substituted for the words " the costs of the prosecutor ", *ibid*.

3. These words were substituted for the words " has power under this section to award by way of costs " by S. 2 of the Code of Criminal Procedure (Amendment) Act, 1932 (XXI of 1932).

4. This sub-section was inserted by S. 145 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

5. This word was substituted for the word " costs " by S. 2 of the Code of Criminal Procedure (Amendment) Act, 1932 (XXI of 1932).

6. These words were substituted for the words " any expenses reasonably incurred by such person in consequence of the application ", *ibid*.

7. This sub-section was substituted, *ibid*.

8. This sub-section was substituted by S. 145 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

9. This *Explanation* was added by S. 2 of the Code of Criminal Procedure (Amendment) Act, 1932 (XXI of 1932).

1 [(10) If, before the argument (if any) for the admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins, any party interested intimates to the Court that he intends to make an application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court, postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon.]

2 [526-A. (1) Where any person subject to the Naval Discipline Act 3 [(other than a person to whom that Act applies by virtue of the Indian Navy (Discipline) Act, 1934)] or to the Army Act or to the Air Force Act is accused of any offence such as is referred to in proviso (a) to section 41 of the Army Act, the Advocate General shall, if so instructed by the competent authority, apply to the High Court for the committal or transfer of the case to that High Court and thereupon the High Court shall order that the case be committed for trial to or be transferred to itself and shall thereafter proceed to try the case by jury.

(2) The 4[Central Government] may, by notification in the 5 [official Gazette], declare any officer to be the competent authority for the purpose of issuing instructions under sub-section (1) in regard to any class of cases specified in the notification.]

527. (1) The 4[Provincial Government] may, by notification in the 5 [official Gazette], direct the transfer of any particular 6* case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court, to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to 7 [it] that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses:

8 [Provided that no case or appeal shall be transferred to a High Court or other Court in another Province without the consent of the Provincial Government of that Province.]

(2) The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

1. This sub-section was added by S. 2 of the Code of Criminal Procedure (Amendment) Act, 1932 (XXI of 1932).

2. This section was inserted by S. 89 of the Criminal Law Amendment Act, 1923 (XII of 1923).

3. These brackets, words and figures were inserted by S. 2 and Sch. of the Amending Act, 1934 (XXXV of 1934.)

4. These words were substituted for the words "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

5. These words were substituted for the words "Gazette of India" *ibid*.

6. The word "Criminal" was omitted by S. 146 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

7. This word was substituted for the word "him" by the Government of India (Adaptation of Indian Laws) Order, 1937.

8. This proviso was added, *ibid*.

Sessions Judge may withdraw cases from Assistant Sessions Judge.

528. 1 [(1) Any Sessions Judge may withdraw any case from, or recall any case which he has made over to any Assistant Sessions Judge subordinate to him.]

2 [(1-A) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, any Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.]

(1-B) Where a Sessions Judge withdraws or recalls a case under sub-section (1) or recalls a case or appeal under sub-section (1-A), he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this Code to another court for trial or hearing, as the case may be.]

3 [(2)] Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Power to authorize District Magistrate to withdraw classes of cases.

3 [(3)] The 4 [Provincial Government] may authorize the District Magistrate to withdraw from any Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

5 [(4) Any Magistrate may recall any case made over by him under section 192, sub-section (2), to any other Magistrate and may inquire into or try such case himself.]

3 [(5)] A Magistrate making an order under this section shall record in writing his reasons for making the same.

6 [(6) The head of a village under the Madras Village-police Regulation, 1816, or the Madras Village-police Regulation, 1821, is a Magistrate for the purposes of this section.]

1. This sub-section was substituted by S. 147 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

2. These sub-sections were added by S. 2 of Act III of 1946.

3. Original sub-sections (1), (2), and (3) were re-numbered (2), (3) and (5), respectively. *ibid.*

4. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

5. This sub-section was inserted by S. 147 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

6. This sub-section was substituted for original sub-section (4) after it was re-numbered as sub-section (6), *ibid.*

S. 528.—Though sub-section (2) does not say so it is desirable in the interests of justice that notice should go to accused 1929 M.W.N. 265 Cr. 37 following 26 Mad. 41 and A.I.R. 1928 Mad. 560. Transfer of a case without such notice should be set aside 1954 M.W.N. 98 Cr. 26. There is no power to transfer a case under sub-section (2) when pronouncing judgment alone remains 1935 M.W.N. 1281 Cr. 225. No costs can be awarded in an application under this section 1938 M.W.N. 1105 Cr. 185. Order of transfer under this section operates from the date of the order. A conviction before the receipt of order but after it was passed though will be validated by S. 481 of the Code, I.L.R. 1938 Mad. 1003.

1 [CHAPTER XLIV-A.]

SUPPLEMENTARY PROVISIONS RELATING TO EUROPEAN AND INDIAN
BRITISH SUBJECTS AND OTHERS.

528A. (1) Where, in any case to which the provisions of Chapter XXXIII do not apply, any person claims to be dealt with as an European or Indian British subject, or where any person claims to be dealt with as an European (other than an European British subject) or an American, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purpose of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject or an Indian British subject, or an European or an American, as the case may be, and shall deal with him accordingly.

(2) When any such claim is rejected by the Magistrate and the person by whom it was made is committed by the Magistrate for trial before the Court of Session, and such person repeats the claim before such Court, such Court shall, after such further inquiry, if any, as it thinks fit, decide the claim, and shall deal with such person accordingly.

(8) When any Court before which any person is tried rejects any such claim as aforesaid the decision shall form a ground of appeal from the sentence or order passed in such trial.

528B. If in any such case an European or Indian British subject or an European (other than an European British subject) or an American does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim has been made before and rejected by the committing Magistrate, it is not repeated before the Court to which such person is committed, he shall be held to have relinquished his right to be dealt with as an European British subject or an Indian British subject, or an European or an American as the case may be, and shall not assert it in any subsequent stage of the case.

528C. Where a person, not being an European British subject, is dealt with as an European British subject or, not being an Indian British subject, is dealt with as an Indian British subject or, not being an European (other than an European British subject) or American, is dealt with as an European or American, and such person does not object, the inquiry, commitment, trial, or sentence, as the case may be, shall not, by reason of such dealing, be invalid.

528D. (1) Unless there is something repugnant in the context, all enactments made by ²[the Central Legislature] which confer on Magistrates or on the Court of Session jurisdiction over offences shall be deemed to apply to European British subjects, although such persons are not expressly referred to therein.

1. Chapter XLIV-A was inserted by S. 38 of the Criminal Law Amendment Act, 1928 (XII of 1928).

2. These words were substituted for the words "the Governor General in Council or the Indian Legislature" by the Government of India (Adaptation of Indian laws) Order, 1937.

(2) Nothing in this section shall be deemed to authorise any Court to exceed the limits prescribed by this Code as to the amount of punishment which it may inflict on an European British subject or to confer jurisdiction on any Magistrate of the second or third class for the trial of such subjects.]

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

Irregularities
which do not vitiate
proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely :—

- (a) to issue a search-warrant under section 98 ;
- (b) to order, under section 155, the police to investigate an offence ;
- (c) to hold an inquest under section 176 ;
- (d) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits ;
- (e) to take cognizance of an offence under section 190, sub-section (1), clause (a) or clause (b) ;
- (f) to transfer a case under section 192 ;
- (g) to tender a pardon under section 337 or section 338 ;
- (h) to sell property under section 524 or section 525 ; or
- (i) to withdraw a case and try it himself under section 528 ;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities
which vitiate pro-
ceedings.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely :—

- (a) attaches and sells property under section 88 ;
- (b) issues a search warrant for a letter, parcel or other thing in the Post Office, or a telegram in the Telegraph Department ;
- (c) demands security to keep the peace ;
- (d) demands security for good behaviour ;
- (e) discharges a person lawfully bound to be of good behaviour ;
- (f) cancels a bond to keep the peace ;
- (g) makes an order under section 133 as to a local nuisance ;
- (h) prohibits, under section 143, the repetition or continuance of a public nuisance ;
- (i) issues an order under section 144 :
- (j) makes an order under Chapter XII ;

S. 530.—Trial by a magistrate of an offender for an offence under S. 186 without a complaint from a public servant is void under (p) I.L.R. 1937 Mad. 604. Where a third class magistrate tried an offence outside his jurisdiction conviction should be set aside 1935 M.W.N. 474 Cr. 89. but trial by magistrate of different territorial jurisdiction is not *per se* void 56 Mad. 996. Conviction by second class magistrate under S. 332 I.P.C. is illegal and should be set aside 1928 M.W.N. 465. Proceedings of a magistrate trying a case transferred by him to another magistrate and not retransferred to him are void under (p) 1930 M.W.N. 413 Cr. 109. If magistrate tries a person for a less serious offence unless he has deliberately overlooked certain facts to seize at the jurisdiction proceedings are proper 1941 M.W.N. 811 Cr. 107.

- (k) takes cognizance, under section 190, sub-section (1), clause (c), of an offence ;
- (l) passes a sentence, under section 349, on proceedings recorded by another Magistrate ;
- (m) calls, under section 435, for proceedings ;
- (n) makes an order for maintenance ;
- (o) revises, under section 515, an order passed under section 514 ;
- (p) tries an offender ;
- (q) tries an offender summarily ; or
- (r) decides an appeal ;

his proceedings shall be void.

531. No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

532. (1) If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

(2) If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment and direct a fresh inquiry by a competent Magistrate.

533. (1) If any Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 364 is tendered or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded ; and notwithstanding anything contained in the Indian Evidence Act, 1872, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

(2) The provisions of this section apply to Courts of Appeal, Reference and Revision.

534. An omission to inform under section 447 any person of his rights under Chapter XXXIII shall not affect the validity of any proceeding.]

535. (1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby.

Effect of omission to prepare charge.

(2) If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be re-commenced from the point immediately after the framing of the charge.

Trial by jury of offence triable with assessors.

536. (1) If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

(2) If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.

Trial with assessors of offence triable by jury.

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

537. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

(a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

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1. Clause (b) was omitted by S. 148 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

S. 536.—Where Jury found accused guilty only of offences triable by assessors the conviction and sentence thereon are not invalid unless it has led to miscarriage of justice 1927 M.W.N. 299 distinguishing 26 Mad. 243. The accused should take the objection at the trial Court itself 1930 M.W.N. 776 Cr. 176.

S. 537.—Where a person was charged with grievous hurt and convicted for affray without specific charge and clear notice of same, trial is vitiated and conviction is set aside 1933 M.W.N. 718 Cr. 106. Omission of magistrate to examine accused afresh under S. 342 is curable under this section 1934 M.W.N. 1136 Cr. 209. The qualification unless such error etc. has occasioned a failure of justice governs the whole of the section 1927 M.W.N. 108 (P.O.) Section does not assume that if a mandatory provision of the Code has been infringed in framing the charge the Court must have necessarily failed in administering justice. Actual injustice should have resulted 53 Mad. 987 also 1929 M.W.N. 506 Cr. 92. Failure to define expressly the common object of an unlawful assembly is an irregularity curable under this section 1930 M.W.N. 80 Cr. 8. Omission of S. 149 I.P.O. from charge does not itself make conviction illegal unless accused is materially prejudiced 47 Mad 746. (F.B.) In a non cognisable offence complaint instead of a charge sheet was filed this was curable by this section A.I.R. 1929 Mad. 115. Non examination of accused under S. 342 after P.Ws have been recalled for further cross examination is not cured by this section 46 Mad. 820. Non examination of complainant on oath is a mere irregularity 52 Mad. 79. Mere initialling instead of signing a Judgment by a Bench Magistrate cannot be cured by this section 1930 M.W.N. 787 Cr. 179. If one judgment is delivered by appellate Court disposing off two distinct cases unless injustice has followed curable under this section 1927 M.W.N. 68 (P.C.) Section covers any irregularity provided there has been no failure of justice and there is a mere departure from the mandatory provisions of the Code 1929 M.W.N. 898. Where a complaint is made by a Court under S. 476 and the Court has failed to record a finding that offence was committed before it, failure is not curable under this section 1928 M.W.N. 229. Non-examination of accused in *de novo* trial is a curable irregularity 1934 M.W.N. 1136 Cr. 209. 58 Mad. 427. Failure to comply with provisions under S. 342 is curable unless it has occasioned failure of justice I.L.R. 1940 Mad. 514. Non compliance with demand of accused to resumption witness does not vitiate trial 1938 M.W.N. 820 Cr. 136. Order of discharge without recording reasons is cured by section 1938 M.W.N. 88 Cr. 14. Contravention of provisions of S. 234 in trying over 41 charges for offences committed over a period of 2 years is not cured by this section 26 Mad. 61 (P.C.)

(c) of the omission to revise any list of jurors or assessors in accordance with section 324, or

(d) of any misdirection in any charge to a jury unless such error, omission, irregularity,^{1*} or misdirection has in fact occasioned a failure of justice.

Explanation.—In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

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Attachment not illegal, person making same not trespasser for defect or want of form in proceedings.

538. No ³[attachment] made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of ³[attachment] or other proceedings relating thereto.

CHAPTER XLVI.

MISCELLANEOUS.

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

4 [539A] (1) When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

An affidavit to be used before any Court other than a High Court under this section may be sworn or affirmed in the manner prescribed in section 539, or before any Magistrate.

Affidavits under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable grounds to believe to be true, and, in the latter case, the deponent shall clearly state the grounds of such belief.

(2) The Court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended.

1. The word "want" was omitted, by S. 148 of Act XVIII of 1923.

2. The *Illustration* was omitted, *ibid.*

3. This word was substituted for the word "distress" by S. 149, *ibid.*

4. Sections 539A and 539B were inserted by S. 150 *ibid.*

[539B. (1) Any Judge or Magistrate may at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost :

Provided that, in the case of a trial by jury or with the aid of assessors, the Judge shall not act under this section unless such jury or assessors are also allowed a view under section 293.]

540 Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined ; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

1 [540A. (1) At any stage of an inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such accused is or are incapable of remaining before the Court, he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

1. Section 540A was inserted by S. 151 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

S. 539B.—No notice necessary before local inspection. Magistrate should afford opportunity to party against whom an adverse inference is to be drawn to explain away the impression caused by such local inspection 1928 M.W.N. 69. Section lays down the conditions under which the local inspection has to be conducted. This should not divert the due and orderly administration of law into a new course and set up an evil precedent in future 1986 M.W.N. 1840 Cr. 224, (P.O.) (Conviction based on an inspection by some of the magistrates as contained in a memorandum drawn later is invalid 1932 M.W.N. 645 Cr. 125. Local inspection would be of no value if it is for the purpose of testing sound ; 54 Mad, 678.

S. 540.—Section confers wider powers but the wider the powers the greater the discretion required by magistrate A.I.R. 1927 Mad. 361. The terms of the section are wide and any person whose evidence appears to the Court as essential to the just decision of the case may be examined 1924 M.W.N. 803. The magistrate has not got an inherent and unlimited jurisdiction in calling witnesses under this section at any time and for any purpose. He ought not to call a witness to enable the prosecution to cross examine on a prior statement especially after the case is closed 1929 M.W.N. 895 Cr. 69. Where an essential document is overlooked and a witness is recalled and the document put to her it is for the just decision of the case 1929 M.W.N. 901 Cr. 205. The section is mandatory and is as equally available to the defence as to the prosecution 1984 M.W.N. 993 Cr. 185. where evidence of certain witness cannot be made available to prosecution without intervention of Court like summoning convicted prisoners to be produced by order of Court the Court if it thinks it necessary for the just decision of the case may judicially exercise the power under this section 1940 M.W.N. 1164 Cr. 166. The magistrate may examine a Court witness called not for the sole purpose of rebutting defence evidence but to explain circumstances appearing in evidence 1941 M.W.N. 1032 Cr. 156. The Court can examine a witness not examined by prosecution as he turned hostile, if the witness is really an important witness 1941 M.W.N. 766 Cr. 94.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.]

541. (1) Unless when otherwise provided by any law for the time being in force, the ¹[Provincial Government] may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Power to appoint place of imprisonment.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

(2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(3) When a person is removed to a criminal jail under ²[sub-section (2)], he shall, on being released therefrom, be sent back to the civil jail, unless either—

- (a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the Civil jail under section 342 of the Code of Civil Procedure³; or
- (b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure.⁴

542. (1) Notwithstanding anything contained in the Prisoners' Testimony Act, 1869 ⁴, any Presidency Magistrate desirous of examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

543. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Interpreter to be bound to interpret truthfully.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. This word and figure was substituted for the word and figure "sub-section (1)" by S. 2 and Sch. I of the Repealing and Amending Act, 1924 (VI of 1924).

3. See now the Code of Civil Procedure, 1908 (V of 1908) S. 56 and the Provincial Insolvency Act 1920 (V of 1920), S. 27.

4. See now the Prisoners Act, 1900 (III of 1900).

544. Subject to any ¹rules made by the ²[Provincial Government],
³ * * * any Criminal Court may, if it thinks fit, order
 Expense of com- payment, on the part of Government, of the reasonable
 plainants and expenses of any complainant or witness attending for the
 witnesses. purposes of any inquiry, trial or other proceeding before
 such Court under this Code.

545. (1) Whenever under any law in force for the time being a Criminal
 Court imposes a fine or confirms in appeal, revision or
 otherwise a sentence of fine, or a sentence of which fine
 forms a part, the Court may, when passing judgment, order
 the whole or any part of the fine recovered to be applied—
 Power of Court to
 pay expenses or
 compensation out
 of fine.

(a) in defraying expenses properly incurred in the prosecution ;

⁴[(b) in the payment to any person of compensation for any loss or
 injury caused by the offence, when substantial compensation
 is, in the opinion of the Court, recoverable by such person in a
 Civil Court] ;

⁵ [c] When any person is convicted of any offence which includes
 theft, criminal misappropriation, criminal breach of trust, or
 cheating, or of having dishonestly received or retained, or of
 having voluntarily assisted in disposing of, stolen property
 knowing or having reason to believe the same to be stolen,
 in compensating any *bona fide* purchaser, of such property
 for the loss of the same if such property is restored to the
 possession of the person entitled thereto.]

(2) If the fine is imposed in a case which is subject to appeal, no such
 payment shall be made before the period allowed for presenting the appeal has
 elapsed, or, if an appeal be presented, before the decision of the appeal.

546. At the time of awarding compensation in any
 subsequent civil suit relating to the same matter, the Court
 shall take into account any sum paid or recovered as
 compensation under section 545.
 Payments to be
 taken into account
 in subsequent suit.

⁶ [546-A. (1) Whenever any complaint of a non-
 cognizable offence is made to a Court, the Court, if it
 convicts the accused, may in addition to the penalty imposed
 upon him, order him to pay to the complainant—
 Order of payment
 of certain fees paid
 by complainant in
 non-cognizable
 cases.

(a) the fee (if any) paid on the petition of complaint or for the
 examination of the complainant, and

(b) any fees paid by the complainant for serving processes on his
 witnesses or on the accused,

1. For rules see the different Local Rules and Orders.

2. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. The words "with the previous sanction of the Governor-General in Council," were omitted by S. 2 and Sch. I of the Devolution Act, 1930 (XXXVIII of 1930).

4. This clause was substituted by S. 152 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

5. This clause was added by S. 153 *ibid.*

6. Section 546-A was inserted by S. 153, *ibid.*

and may further order that, in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(2) An order under this section may also be made by an Appellate Court, or by the High Court, when exercising its powers of revision.]

547. Any money (other than a fine) payable by virtue of any order made under this Code, ¹[and the method of recovery of which is not otherwise expressly provided for] shall be recoverable as if it were a fine.

Monies ordered to be paid recoverable as fines.

548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record he shall, on applying for such copy, be furnished therewith :

Copies of proceedings.

Provided that he pays for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

549. (1) The ² [Central Government] may make rules consistent with this Code and the ³ [Army Act ⁴ [the Naval Discipline Act and that Act as modified by the Indian Navy (Discipline) Act, 1934,] and the Air Force Act and] any similar law for the time being in force as to the cases in which persons subject to ⁵ [military, ⁶ [naval] or air force law], shall be tried by a Court to which this Code applies, or by Court-martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable, ⁷ [to be tried either by a Court to which this Code applies or by a Court-martial], such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps, ⁸ [ship] or detachment, to which he belongs, or to the commanding officer of the nearest ⁹ [military, ⁶ [naval] or air force station, as the case may be], for the purpose of being tried by Court-martial.

Delivery to Military authorities of persons liable to be tried by court-martial.

1. These words were inserted by S. 154 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

2. These words were substituted for the words "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. These words were substituted for the words "Army Act or" by S. 2 and Sch. I of the Repealing and Amending Act 1927 (X of 1927).

4. These words and figures were inserted by S. 2 and Sch. of the Amending Act, 1934 (XXXV of 1934).

5. These words were substituted for the words "military law" by S. 2 and Sch. I of the Repealing and Amending Act, 1927 (X of 1927).

6. This word was inserted by S. 2 and Sch. of the Amending Act, 1934 (XXXV of 1934).

7. These words were substituted for the words and figures "under the Army Act, section 41, or under the Air Force Act, section 41, to be tried by a Court-martial" *ibid*.

8. This word was inserted, *ibid*.

9. These words were substituted for the words "military station" by S. 2 and Sch. I of the Repealing and Amending Act, 1927 (X of 1927).

S. 548.—The accused is not entitled to copy of Police report in proceedings under S. 107 of the Code: 1930 M.W.N. 1100 Cr. 244.

S. 549.—Where a person subject to Military Naval or Air Force Law is convicted in contravention to rules framed by the Central Government the trial is illegal and must be set aside in revision 1945 M.W.N. 262 Cr. 50.

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of ¹ [soldiers, sailors or airmen] stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

550. Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that officer.

551. Police-officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

552. Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of ² [sixteen] years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

553. (1) Whenever any person causes a police-officer to arrest another person in a presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so-recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

Power of chartered High Courts to make rules for inspection of records of subordinate Court.

554. (1) ³ [With the previous sanction of the Provincial Government, any High Court] established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

1. These words were substituted for the word "troop" by S. 2 and Sch. of the Amending Act, 1934 (XXXV of 1934.)

2. This word was substituted for the word "fourteen" by S. 5 of the Indian Criminal Law Amendment Act, 1924 (XVIII of 1924).

3. These words were substituted for the words "with the previous sanction of the Governor General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 552.—Marriage must be established where husband purports to seek restoration of his minor wife from her parents' custody. Minority must be alleged in application; 1941 M.W.N. 448 Cr. 43.

Power of other High Courts to make rules for other purposes.

(2) Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the ¹ [Provincial Government],—

- (a) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts ;
- (b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided ;
- (c) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it ; and
- (d) make rules for regulating the execution of warrants issued under this Code for the levy of fines :

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(3) All rules made under this section shall be published in ² [official Gazette].

555. Subject to the power conferred by section ³ [554], and by ⁴ [section 224 of the Government of India Act, 1935], the forms set

Forms.

forth in the Fifth Schedule, with such variation as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

556. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Case in which Judge or Magistrate is personally interested.

Explanation.—A Judge or Magistrate shall not be deemed a party, or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

Illustration.

A, as Collector, upon consideration of information furnished to him, directs the prosecution of B, for a breach of the Excise Laws. A is disqualified from trying this case as a Magistrate.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words were substituted for the words "local official Gazette" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. These figures were substituted for the figures "553" by the Repealing and Amending Act 1903 (I of 1903).

4. These words and figures were substituted for the words and figures "section 107 of the Government of India Act, 1915" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 556.—Where magistrates held identification it is desirable that he should not hold preliminary enquiry 1937 M.W.N. 1200 Cr. 248. Sub Collector who sanctioned prosecution cannot hear appeal as Joint Magistrate 1940 M.W.N. 805 Cr. 98. Where Dt. Judge who dismissed an appeal from the order of the Dt. Munsiff sanctioning prosecution he is competent to try the case in Sessions 1942 M.W.N. 484 Cr. 112.

Practising pleader
not to sit as Magis-
trate in certain
Courts.

557. No pleader who practises in the Court of any Magistrate in a Presidency-town or district, shall sit as a Magistrate in such Court or in any Court within the jurisdiction of such Court.

558. The ¹[Provincial Government] may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than ²[the Courts which are High Courts for the purposes of the Government of India Act, 1935].

Power to decide
language of Courts.

Provision of
powers of Judges and
Magistrates being
exercised by their
successors in office.

³[559. (1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

(2) When there is any doubt as to who is the successor in office of any Magistrate, the Chief Presidency Magistrate in a presidency-town, and the District Magistrate outside such towns, shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

(3) When there is any doubt as to who is the successor in office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge.

Officers concerned
in sales not to
purchase or bid for
property.

560. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

Special provisions
with respect to
offence of rape by a
husband.

561. (1) Notwithstanding anything in this Code, no Magistrate except a Chief Presidency Magistrate or District Magistrate shall—

(a) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(b) commit the man for trial for the offence.

(2) And, notwithstanding anything in this Code, if a Chief Presidency Magistrate or District Magistrate deems it necessary to direct an investigation by a police-officer, with respect to such an offence as is referred to in sub-section (1), no police officer of a rank below that of police-inspector shall be employed either to make, or to take part in the investigation.

4 [561A. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.]

Saving of inherent
power of High
Court.

1. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. These words were substituted for the words "the High Courts established by Royal Charter" *ibid*.

3. Section 559 was substituted by S. 155 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

4. Section 561-A was inserted by S. 156 of the Code of Criminal Procedure (Amendment) Act, 1928 (XVIII of 1928).

S. 561A.—High Court can suspend order under this section passed by magistrate under S. 144 of the Code. 1932 M.W.N. 726 Cr. 182. In expunging remarks in judgment of lower court, court will exercise their discretion if words are irrelevant, scandalous and improper as also adversely affecting character of persons with due regard to free expression of judicial opinion I.L.R. 1944 Mad. 614 Section does not confer new powers but safeguards existing and inherent powers 1945 M.W.N. 49 Cr. 9 (P.C.) also 1945 M.W.N. 366 Cr. 62 (P.C.)

First Offenders.

562. (1) When any person not under twenty-one years of age is convicted of an offence punishable with imprisonment for not more than seven years, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or transportation for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offenders; and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour:

Power of Court to release certain convicted offenders on probation of good conduct instead of sentencing to punishment.

Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the [Provincial Government] in this behalf, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class or Sub-divisional Magistrate, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 380.

1. Section 562 was substituted by S. 157, of Act XVIII of 1923.

2. These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 562.—The effect of an order under this section by the High Court in appeal is to set aside the sentence passed on the accused by the Lower Court. Failure to furnish security entails production before Court for suitable punishment to be awarded A.I.B. 1925 Mad. 496. Proviso in the sub-section (1) is a proviso to whole of the section Magistrate who is not empowered to exercise jurisdiction under the section can only submit the case for orders under S. 349 to a first class magistrate 1934 M.W.N. 80 Cr. 24. An offence under S. 408 I.P.C. cannot dealt with under sub-section 1 (a) An order under sub-section (1) can be passed releasing accused on execution of bonds 1984 M.W.N. 1283 Cr. 235. Under the proviso to the section the magistrate cannot set aside the conviction and acquit him without notice to any party 1983 M.W.N. 716 Cr. 104 Section is intended to be used to prevent young persons from being committed to jail where they may associate with hardened criminals who may lead them further along the path of crime and to help even men of mature years who for the first time have committed crimes through ignorance or inadvertence or bad influence of others and who but for such lapses might be expected to make good citizens. Such persons would be sufficiently punished by the shame of having committed a crime and by the mental agony and disgrace that a trial in a Criminal Court would involve. It was not intended that this section should be applied to experienced men of the world who deliberately flout the law and commit offences which they know are strongly condemned by their superior officers but which they have persisted in doing if only that it might not be said of them that they have been able to detect a petty crime 1941 M.W.N. 505 Cr. 53. Magistrate to whom case is referred has to proceed under S. 380 of the Code So he cannot set aside the conviction 1942 M.W.N. 49 Cr. 123. It is inappropriate though not illegal to apply the section to an offence under S. 304 I.P.C. 1942 M.W.N. 169 Cr. 41 Section applies to first offenders and is in applicable to person who had already been in a Borstal School 1943 M.W.N. 377 Cr. 81. Distinction between S. 349 and S. 562 is that in the former section the referring magistrate sends the case with an opinion that accused are guilty and leave the judgment to the superior magistrate and under the latter the accused is convicted and superior magistrate has no option but to pass sentence under S. 380 of the Code. It is open to a magistrate to sentence some of the accused and some of others this section 1943 M.W.N. 60 Cr. 9 Section will not apply to a case under S. 326 I.P.C. 1943 M.W.N. 585 Cr. 145. Section does not also apply to person aged over 21 charged with an offence under S. 454 I.P.C. 1943 M.W.N. 840 Cr. 68. also not applicable to an offence under S. 409 I.P.C. 1945 2 M.L.J. 575.

¹ [(1A) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code punishable with not more than two years' imprisonment and no previous conviction is proved against him, the Court before whom he is so convicted may, if it thinks fit, having regard to the age, character, antecedents of physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.]

(2) An order under this section may be made by any Appellate Court or by the High Court when exercising its power of revision.

(3) When an order has been made under this section in respect of any offender, the High Court may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law :

Provided that the High Court shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(4) The provisions of sections 122, 126A and 406A shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.]

563 (1) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(2) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence. Such Court may, after hearing the case, pass sentence.

564. The Court, before directing the release of an offender under section 562 ² [sub-section (1)], shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(2) Nothing in this section or in sections 562 and 563 shall affect the provisions of section 31 of the Reformatory Schools Act, 1897.

1. Sub-section (1A) was inserted by S. 4 of the Code of Criminal Procedure (Second Amendment) Act, 1923 (XXXVII of 1923.)

2. This word and figure were inserted by S. 2 and Sch. I of the Repealing and Amending Act, 1924 (VII of 1924).

Previously convicted offenders.

Order for notifying address of previously convicted offender.

1 [565. When any person having been convicted—

- (a) by a Court in British India of an offence punishable under section 215, section 489A, section 489B, section 489C, or section 489D of the Indian Penal Code, or of any offence punishable under Chapter XII or Chapter XVII of that Code, with imprisonment of either description for a term of three years or upwards, or
- (b) by a Court or Tribunal in ²[any Indian State acting under the general or special authority of the Central Government or of the Crown Representative] of any officer which would, if committed in British India, have been punishable under any of the aforesaid sections or Chapters of the Indian Penal Code with like imprisonment for a like term,

is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years or upwards by a High Court, Court of Session, Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of transportation or imprisonment on such person, also order that his residence and any change of or absence from such residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The ³[Provincial Government] may make rules to carry out the provisions of this section relating to the notification of residence or change of or absence from residence by released convicts.

(4) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

* * * * *

⁴ [(5)] Any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.]

SCHEDULE I.—[Enactments repealed.] Repealed by the Repealing and Amending Act 1914 (X of 1914) S. 3 and Sch. II.

1. Section 565 was substituted by S. 153 of the Code of Criminal Procedure (Amendment) Act, 1933 (XVIII of 1933).

2. These words were substituted for the words "the territories of any Prince or State in India acting under the general or special authority of the Governor General in Council, or of any Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3. These words were substituted for the words "Local Government", *ibid*.

4. Sub-section (5) was omitted and the original sub-section (6) re-numbered (5) by S. 3 of the Criminal Law Amendment Act, 1939 (XXII of 1939).

SCHEDULE I.
ENACTMENTS REPEALED
(Repealed by Act X of 1914.)

SCHEDULE II.
TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE. The entries in the second and seventh columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

The third column of this schedule applies also to the police in the towns of Calcutta and Bombay

CHAPTER V.-- ABETMENT.

1	2	3	4	5	6	7	8
XLV of 1860 Sect.on.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
111	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	Ditto	Ditto	Ditto	Ditto	The same punishment as for the offence intended to be abetted.	Ditto
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Ditto	Ditto	Ditto	Ditto	The same punishment as for the offence committed.	Ditto

1	2	3	4	5	6	7	8
XLV of 1860. Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
114	Abetment of any offence, if abettor is present when offence is committed.	May arrest without warrant if arrest for the offence abetted may be made without warrant but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence committed.	The Court by which the offence abetted is triable.
115	Abetment of an offence, punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto	Ditto	Not bailable	Ditto	Imprisonment of either description for 7 years and fine.	Ditto
	If an act which causes harm be done in consequence of the abetment.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 14 years and fine.	Ditto
116	Abetment of an offence, punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto	Ditto	According as the offence abetted is bailable or not.	Ditto	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto	Ditto	Ditto	Ditto	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto
117	Abetting the commission of an offence by the public or by more than ten persons.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Ditto

1	2	3	4	5	6	7	8
XLV of 1860 Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
118	Concealing a design to commit an offence punishable with death or transportation for life if the offence be committed.	May arrest without warrant if arrest for the offence abetted may be made without warrant but not otherwise.	According as a warrant or summons may issue for the offence abetted.	Not bailable	According as the offence abetted is compoundable or not.	Imprisonment of either description for 7 years, and fine.	The Court by which the offence abetted is triable.
	If the offence be not committed.	Ditto	Ditto	Bailable.	Ditto	Imprisonment of either description for 3 years and fine	Ditto
119	A public servant concealing a design to commit an offence which it is his duty to prevent if the offence be committed.	Ditto	Ditto	According as the offence abetted is bailable or not.	Ditto	Imprisonment extending to half of the longest term and of any description, provided for the offence, or fine, or both.	Ditto
	If the offence be punishable with death or transportation for life.	Ditto	Ditto	Not bailable	Ditto	Imprisonment of either description for 10 years.	Ditto
	If the offence be not committed.	Ditto	Ditto	Bailable.	Ditto	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto	Ditto	According as the offence concealed is bailable or not.	Ditto	Ditto	Ditto

1	2	3	4	5	6	7	8
XLV of 1860 Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
120	If the offence be not committed.	May arrest without warrant if arrest for the offence abetted may be made without warrant but not otherwise.	According as a warrant or summons may issue for the offence abetted.	Bailable.	According as the offence abetted is compoundable or not.	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	The Court by which the offence abetted is triable.

CHAPTER V-A—CRIMINAL CONSPIRACY.

120 B	Criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards.	May arrest without warrant if arrest for the offence which is the object of the conspiracy may be made without warrant but not otherwise.	According as a warrant or summons may issue for the offence which is the object of the conspiracy.	According as the offence which is the object of the conspiracy is bailable or not.	Not compoundable.	The same punishment as that provided for the abetment of the offence which is the object of the conspiracy	Court of Session when the offence which is the object of the conspiracy is triable exclusively by such Court; in the case of all other offences Court of Session, Presidency Magistrate or Magistrate of the first class.
	Any other criminal conspiracy.	Shall not arrest without a warrant.	Summons.	Bailable	Idem	Imprisonment of either description for six months and fine or both.	Presidency Magistrate or Magistrate of the first class.

CHAPTER VI—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war, or abetting the waging of war against the Queen.	Shall not arrest without warrant.	Warrant	Not bailable	Not compoundable.	Death, or transportation for life and, fine.	Court of Session.
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1	2	3	4	5	6	7	8
XLV of 1660 Section	Offence.	Whether the Police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not.	Whether com-poundable or not	Punishment under the Indian Penal Code	By what Court triable
121 A	Conspiring to commit certain offences against the State.	Shall not arrest without warrant	War-rant	Not bailable	Not com-pound-able	Transportation for life or any shorter term, or imprisonment of either description for 10 years and fine	Court of Ses-sion
122	Collecting arms etc., with the inten-tion of waging war against the Queen	Ditto	Ditto	Ditto	Ditto	Transportation for life, or im-prisonment of either de-scription for 10 years and fine	Ditto
123	Concealing with intent to facilitate a design to wage war.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either de-scrip-tion for 10 years and fine	Ditto
124	Assaulting Govern-or General, Govern-or, etc., with intrent to compel or restrain the exercise of any lawful power	Ditto	Ditto	Ditto	Ditto	Imprisonment of either descrip-tion for 7 years, and fine.	Ditto
124 A	Sedition	Ditto	Ditto	Ditto	Ditto	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine or fine	Court of Ses-sion, Chief Pre-sidency Magis-trate or Dist. Magistrate or the first class specially em-pow-ered by the Provincial Gov-ernment in that behalf.
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto	Ditto	Ditto	Ditto	Transportation for life and fine, or imprisonment of either descrip-tion for 7 years and fine, or fine	Court of Ses-sion.
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either descrip-tion for 7 years and fine and forfeiture of cer-tain property.	Ditto

1	2	3	4	5	6	7	8
XLV of 1860. Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
127	Receiving property taken by war or depredation, mentioned in sections 125 and 126.	Shall not arrest without warrant	Warrant.	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine, and forfeiture of certain property	Court of Session.
128	Public servant voluntarily allowing prisoner of state of war in his custody to escape.	Ditto	Ditto	Ditto	Ditto	Transportation for life or imprisonment of either description for 10 years, and fine	Ditto
129	Public servant negligently suffering prisoner of state or war in his custody to escape.	Ditto	Ditto	Bailable	Ditto	Simple imprisonment for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
130	Aiding escape of rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto	Ditto	Not bailable	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session

CHAPTER VII - OFFENCES RELATING TO THE ARMY AND NAVY

131	Abetting mutiny, or attempting to seduce an officer soldier, sailor or airman from his allegiance or duty	May arrest without warrant	Warrant	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto	Ditto	Ditto	Ditto	Death or transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto
133	Abetment of an assault by an officer, soldier, sailor or airman on his superior officer when in the execution of his office	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.

TABULAR STATEMENT OF OFFENCES

vii

1	2	3	4	5	6	7	8
XLV of 1860, Section.	Offences.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
135	Abetment of the desertion of an officer, soldier, sailor or airman.	May arrest without warrant	Warrant.	Bailable	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
136	Harbouring such an officer, soldier, sailor or airman who has deserted.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
137	Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant	Summons.	Ditto	Ditto	Fine of 500 rupees.	Ditto
138	Abetment of act of insubordination by an officer, soldier, sailor or airman, if the offence be committed in consequence.	May arrest without warrant	Warrant.	Ditto	Ditto	Imprisonment of either description for 6 months, or fine, or both.	Ditto
140	Wearing the dress of carrying any token used by a soldier, sailor or airman with intent that it may be believed that he is such a soldier, sailor or airman.	Ditto	Summons.	Ditto	Ditto	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate
CHAPTER VIII—OFFENCES AGAINST THE PUBLIC TRANQUILITY.							
143	Being member of an unlawful assembly.	May arrest without warrant	Summons.	Bailable	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto	Warrant.	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto
145	Joining or continuing in an unlawful assembly knowing that it has been commanded to disperse.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
147	Rioting ...	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto

1	2	3	4	5	6	7	8
XLV of 1860, Section.	Offences.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
148	Rioting, armed with a deadly weapon.	May arrest without warrant	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	Ditto	The same as for the offence.	The Court by which the offence is triable.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant	According to the offence committed by the person hired, engaged or employed.	Ditto	Ditto	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto	Summons.	Bailable.	Ditto	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting Or obstructing public servant when suppressing riot, etc.	Ditto	Warrant.	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	If not committed.	Ditto	Summons.	Ditto	Ditto	Imprisonment of either description for 6 months, or fine, or both.	Ditto

1	2	3	4	5	6	7	8
XXV of 1900, Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code	By what Court triable.
153 A	Promoting enmity between classes.	Shall not arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment of either description for 2 years, or fine or both	Presidency Magistrate or Magistrate of the first class.
154	Owner or occupier of land not giving information of riot etc	Ditto	Summons	Bailable	Ditto	Fine of 1,000 rupees.	Presidency Magistrate or Magistrate of the first or second class
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it	Ditto	Ditto	Ditto	Ditto	Fine	Ditto
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
157	Harbouring persons hired for an unlawful assembly	May arrest without warrant.	Ditto	Ditto	Ditto	Imprisonment of either description for 6 months, or fine, or both.	Ditto
158	Being hired to take part in an unlawful assembly or riot.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
	Or to go armed	Ditto	Warrant	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto
160	Committing affray.	Shall not arrest without warrant	Summons.	Ditto	Ditto	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.

CHAPTER IX.—OFFENCES BY, OR RELATING TO, PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant	Summons.	Bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
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1	2	3	4	5	6	7	8
XLV of 1860. Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
62	Taking a gratification, in order by corrupt or illegal means to influence a public servant.	Shall not arrest without warrant	Summons	Bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the 1st class
168	Taking a gratification for the exercise of personal influence with a public servant.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the 1st class
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 1 year, or fine, or both.	Ditto
167	Public servant framing an incorrect document with intent to cause injury.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the 1st class.
168	Public servant unlawfully engaging in trade.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the 1st class.
169	Public servant unlawfully buying or bidding for property.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto
170	Personating a public servant.	May arrest without warrant	warrant	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.

1	2	3	4	5	6	7	8
XLV of 1960, Section.	Offences.	Whether the Police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
171	Wearing garb or carrying token used by public servant with fraudulent intent	May arrest without warrant	Summons	Bailable	Not compoundable	Imprisonment of either description for 3 months or fine of 200 rupees or both	Any Magistrate.

CHAPTER IXA—OFFENCES RELATING TO ELECTIONS.

171 E	Bribery ...	Shall not arrest without warrant	Summons.	Bailable	Not compoundable	Imprisonment of either description for 1 year, or fine, or both or if treating only, fine only	Presidency Magistrate or Magistrate of the first class.
171 F	Undue influence and personation at an election	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 1 year, or fine, or both, or fine	Ditto
171 G	False statement in connection with an election.	Ditto	Ditto	Ditto	Ditto	Fine	Ditto
171 H	Illegal payments in connection with elections	Ditto	Ditto	Ditto	Ditto	Fine of 500 rupees.	Ditto
171 I	Failure to keep election accounts.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172	Abstending to avoid service of summons or other proceedings from a public servant. If summons or notice require attendance in person etc., in a Court of Justice	Shall not arrest without warrant Ditto	Summons. Ditto	Bailable Ditto	Not compoundable. Ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both. Simple imprisonment for 6 months, or fine of 1,000 rupees, or both	Any Magistrate. Ditto
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation. If summons, etc., require attendance in person, etc., in a Court of Justice.	Ditto Ditto	Ditto Ditto	Ditto Ditto	Ditto Ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both. Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class. Ditto

1	2	3	4	5	6	7	8
XLV of 1860. Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not	Whether compoundable or not	Punishment under the Indian Penal Code	By what Court triable.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority If the order require personal attendance etc., in a Court of Justice	Shall not arrest without warrant	Summons	Bailable	Not compoundable	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate
		Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 6 months or fine of 1,000 rupees, or both	Ditto
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 1 month or fine of 500 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Ch. XXXV, or if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
	If the document is required to be produced in or delivered to a Court of Justice.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	Ditto
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 1 month, or fine of 500 rupees or both.	Presidency Magistrate or Magistrate of the first or second class.
	If the notice or information required respects the commission of an offence, etc.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	Ditto
177	Knowingly furnishing false information to a public servant.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
	If the information required respects the commission of an offence, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto

1	2	3	4	5	6	7	8
XLV of 1860, Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable, or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
176	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without warrant	Summons	Bailable	Not compoundable.	Simple imprisonment for six months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Ch. XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
179	Being legally bound to state truth and refusing to answer questions.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto	warrant	Ditto	Ditto	Imprisonment of either description for 3 years, and fine.	Court of Session Presy. Magistrate or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto	Summons.	Ditto	Ditto	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto
185	Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorised sale, or bidding without intending to perform the obligations incurred thereby.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto

1	2	3	4	5	6	7	8
XLV of 1860 Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what court triable.
186	Obstructing public servant in discharge of his public functions.	Shall not arrest without warrant	Summons.	Bailable	Not compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	President Magistrate or Magistrate of the first or second class
187	Omission to assist public servant when bound by law to give such assistance.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, etc.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 6 months or fine of 500 rupees, or both.	Ditto
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto
	If such disobedience causes danger to human life, health or safety, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto
189	Threatening a public servant with injury to him, or one in whom he is interested to induce him to do or forbear to do any official act.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine or both.	Ditto
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 1 year, or fine, or both.	Ditto

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant.	Bailable	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
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1	2	3	4	5	6	7	8
XLV of 1860, Sec. 10.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
193 (Contd.)	Giving or fabricating false evidence in any other case.	Shall not arrest without warrant	Warrant	Bailable.	Not compoundable.	Imprisonment of either description for 3 years, and fine	Court of Session, Presidency Magistrate or Magistrate of the first class.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto	Ditto	Not bailable	Ditto	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session
	If innocent person be thereby convicted and executed.	Ditto	Ditto	Ditto	Ditto	Death, or as above.	Ditto
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for 7 years or upwards.	Ditto	Ditto	Ditto	Ditto	The same as for the offence.	Ditto
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto	Ditto	According as the offence of giving such evidence is bailable or not.	Ditto	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto	Ditto	Bailable.	Ditto	The same as for giving false evidence.	Ditto
198	Using as a true certificate known to be false in a material point.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto

1	2	3	4	5	6	7	8
XLV of 1860, Section-	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
199	False statement made in any declaration which is by law receivable as evidence.	Shall not arrest without warrant	Warrant.	Bailable.	Not compoundable.	The same as for giving false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.
200	Using as true any such declaration known to be false.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.
	It punishable with transportation for life or imprisonment for 10 years.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	It punishable with less than 10 years imprisonment.	Ditto	Ditto	Ditto	Ditto	Imprisonment for a quarter of the longest term, and of the description provided for the offence, or fine or both.	Presidency Magistrate of the first class, or Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto	Summons.	Ditto	Ditto	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	Ditto	Warrant.	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto
204	Secreting or destroying any document to prevent its production as evidence.	Ditto	Ditto	Ditto	Ditto	Ditto	Presidency Magistrate or Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution or for becoming bail or security.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine or both,	Court of Session, Presidency Magistrate or Magistrate of the first class.

1	2	3	4	5	6	7	8
XLV of 1860, Section.	Offences.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
206	Fraudulent removal or concealment, etc., of property to prevent its seizure as a forfeiture or in satisfaction of a fine under sentence, or in execution of a decree	Shall not arrest without warrant	Warrant	Bailable	Not compoundable	Imprisonment of either description for 2 years, or fine or both	Presidency Magistrate or Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied	Ditto	Ditto	Ditto	Ditto	Ditto	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of Justice.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, and fine.	Ditto
210	Fraudulently obtaining a decree for a sum not due or causing a decree to be executed after it has been satisfied.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years or fine, or both.	Ditto
211	False charge of offence made with intent to injure.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
	If offence charged be punishable with imprisonment for 7 years or upwards.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session. Presidency Magistrate or Magistrate of the first class.
	If offence charged be capital or punishable with transportation for life.	Ditto	Ditto	Ditto	Ditto	Ditto	Court of Session.
212	Harbousing an offender, if the offence be capital.	May arrest without warrant.	Ditto	Ditto	Ditto	Imprisonment of either description for 5 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class

1	2	3	4	5	6	7	8
XLV of 1860 Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what court triable.
212 contd.	If punishable with transportation for life or with imprisonment for 10 years.	May arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with imprisonment for 1 year and not for 10 years.	Ditto	Ditto	Ditto	Ditto	Imprisonment for a quarter of the longest term, and of the description provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
213	Taking gift, etc., to screen an offender from punishment, if the offence be capital.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto	Ditto	Ditto	Ditto	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital.	Shall not arrest without warrant	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto	Ditto	Ditto	Ditto	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.

1	2	3	4	5	6	7	8
XLV of 1860, Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code	By what Court triable.
115	Taking gut to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	May arrest without warrant	Warrant.	bailable	Not compoundable.	Imprisonment of either description for 2 years or fine or both	Presidency Magistrate or Magistrate of the first class.
216	Harboring an offender who has escaped from custody or whose apprehension has been ordered, if the offence be capital.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years with or without fine.	Ditto
	If with imprisonment for 1 year, and not for 10 years.	Ditto	Ditto	Ditto	Ditto	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
216 A	Harbouring robbers or dacoits.	Ditto	Ditto	Ditto	Ditto	Rigorous imprisonment for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons.	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto	Warrant.	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.

1	2	3	4	5	6	7	8
XLV of 1860. Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Shall not arrest without warrant	warrant	Bailable.	Not compoundable.	Imprisonment of either description for 7 years, or fine or both.	Court of Session.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years with or without fine.	Ditto
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 8 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	Ditto	Ditto	Not bailable	Ditto	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
	If under sentence of transportation or penal servitude for life, or transportation, imprisonment or penal servitude for 10 years or upwards.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years with or without fine.	Ditto

1	2	3	4	5	6	7	8
XLV of 1860 Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
222 (Contd.)	If under sentence of imprisonment for less than 10 years or lawfully committed to custody.	Shall not arrest without warrant	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
223	Escape from confinement negligently suffered by a public servant.	Ditto	Summons.	Ditto	Ditto	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of first or 2nd class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant	warrant	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	Ditto	Ditto	Not bailable	Ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If charged with a capital offence.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
	If under sentence of death.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto
225 A	Omission to apprehend, or sufferance of escape on part of public servant, in cases not otherwise provided for— (a) in cases of intentional omission or sufferance.	Shall not arrest without warrant		Bailable.	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

1	2	3	4	5	6	7	8
XLV of 1860. Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
226 (Contd.) A	(b) In case of negligent, omission or sufferance.	Shall not arrest without warrant	Summons.	bailable.	Not compoundable.	Simple imprisonment for 2 years, or fine or both.	Presidency Magistrate or Magistrate of the first or second class.
225 B	Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.	May arrest without warrant	Warrant.	Ditto	Ditto	Imprisonment of either description for 6 months, or fine, or both.	Ditto
226	Unlawful return from transportation.	Ditto	Ditto	Not bailable	Ditto	Transportation for life, and fine, & rigorous imprisonment for 3 years before transportation.	Court of Session.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant	Summons.	Ditto	Ditto	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto	Ditto	bailable	Ditto	Simple imprisonment for 6 months, or fine, of 1,000 rupees, or both.	The Court in which the offence is committed subject to the provisions of Chap. XXXV.
229	Personation of a junior or assessor.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years or fine, or both.	Presidency Magistrate or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant	Warrant	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto	Ditto	Ditto	Ditto	Transportation for life or imprisonment of either description for 10 years, and fine.	Ditto

1	2	3	4	5	6	7	8
XLV of 1860, Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	May arrest without warrant	Warrant.	Not bailable	Not compoundable	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If Queen's coin.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years and fine.	Court of Session
236	Abetting in British India the counterfeiting out of British India of coin.	Ditto	Ditto	Ditto	Ditto	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
238	Import or export of counterfeits of the Queen's coin knowing the same to be counterfeit.	Ditto	Ditto	Ditto	Ditto	Transportation for life or imprisonment of either description for 10 years, and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, etc., the same to any person.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 5 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
240	The same with respect to the Queen's coin,	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, and fine.	Ditto

1	2	3	4	5	6	7	8
XLV of IS60, Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether coin poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed the deliverer did not know to be counterfeit.	May arrest without warrant	Warrant	Not Bailable	Not compoundable.	Imprisonment of either description for 2 years, or fine of 10 times the value of the coin counterfeited or both.	Presidency Magistrate or Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, and fine.	Court of Session Presidency Magistrate or Magistrate of the first class.
343	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto	Ditto	Ditto	Ditto	Ditto	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years and fine.	Court of Session Presidency Magistrate or Magistrate of the first class.
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, and fine.	Ditto
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto

1	2	3	4	5	6	7	8
XLV of 1870 Section.	Offence	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not	Whether compoundable or not	Punishment under the Indian Penal Code.	By what Court triable.
250	Delivery to another of coin possessed with the knowledge that it is altered	May arrest without warrant	Warrant	Not bailable	Not compoundable.	Imprisonment of either description for 5 years and fine	Court of Session, Presidency Magistrate or Magistrate of the first class
251	Delivery of Queen's coin possessed with the knowledge that it is altered	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, and fine	Ditto
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years and fine	Ditto
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 5 years, and fine.	Ditto
254	Delivery to another of coin as genuine which when first possessed, the deliverer did not know to be altered.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine of ten times the value of the coin	Presidency Magistrate or Magistrate of the first or second class.
255	Counterfeiting a Government stamp.	Ditto	Ditto	Bailable	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine	Ditto
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
258	Sale of counterfeit Government stamp.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto

1	2	3	4	5	6	7	8
XLV of 1860. Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
259	Having possession of a counterfeit Government stamp.	May arrest without warrant	Warrant.	Bailable	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
260	Using as genuine a Government stamp known to be counterfeit.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, or fine, or both.	Ditto
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Ditto
262	Using a Government stamp known to have been before used.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the 1st class.
263 A	Fictitious stamps.	Ditto	Ditto	Ditto	Ditto	Fine of 200 rupees.	Presidency Magistrate or Magistrate of the 1st class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
265	Fraudulent use of false weight or measure.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
266	Being in possession of false weights or measures for fraudulent use.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
267	Making or selling false weights or measures for fraudulent use.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto

CHAPTER XIV—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY,
CONVENIENCE, DECENCY AND MORALS.

1	2	3	4	5	6	7	8
XLV of 1860 Section	Offences.	Whether the Police may arrest without warrant or not	Whether a warrant or summons shall ordinarily issue in the first instance	Whether bailable or not	Whether compoundable or not	Punishment under the Indian Penal Code	By what Court triable
969	Negligently doing any act known to be likely to spread infection of any disease dangerous to life	May arrest without warrant	Summons.	Bailable	Not compoundable	Imprisonment of either description for 6 months or fine or both	Presidency Magistrate or Magistrate of the first or second class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both	Ditto
271	Knowingly disobeying any quarantine rules	Shall not arrest without warrant	Ditto	Ditto	Ditto	Imprisonment of either description for 6 months, or fine, or both	Ditto
272	Adulterating food or drink intended for sale so as to make the same noxious	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for months, or fine of 1000 rupees, or both	Ditto
273	Selling any food or drink as food and drink, knowing the same to be noxious	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy or to change its operation, or to make it noxious.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto

1	2	3	4	5	6	7	8
XLV of 1860, Section.	Offences.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
278	Making atmosphere noxious to health.	Shall not arrest without warrant.	Ditto	Ditto	Ditto	Fine of 500 rupees.	Ditto
279	Driving or riding on a public way so rashly or negligently as to endanger human life, etc.	May arrest without warrant	Ditto	Ditto	Ditto	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto
280	Navigating any vessel so rashly or negligently as to endanger human life, etc.	Ditto	Ditto	Ditto	Ditto	Ditto	Presidency Magistrate or Magistrate of the first or second class.
281	Exhibition of a false light, mark or buoy.	Ditto	Warrant	Ditto	Ditto	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
282	Conveying for hire any person, by water, in a vessel in such a state, or so loaded, as to endanger his life.	Ditto	Summons.	Ditto	Ditto	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
283	Causing danger, obstruction or injury in any public way or line of navigation.	Ditto	Ditto	Ditto	Ditto	Fine of 200 rupees.	Ditto
284	Dealing with any poisonous substance so as to endanger human life, etc.	Shall not arrest without warrant	Ditto	Ditto	Ditto	Imprisonment of either description for 6 months, or fine or 1,000 rupees, or both.	Ditto
285	Dealing with fire or any combustible matter so as to endanger human life, etc.	May arrest without warrant	Ditto	Ditto	Ditto	Ditto	Any Magistrate.
286	So dealing with any explosive substance.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto

1	2	3	4	5	6	7	8
XLV of 1860 Section	Offence	Whether the Police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not	Whether compoundable or not	Punishment under the Indian Penal Code	By what Court triable
287	So dealing with any machinery	Shall not arrest without warrant	Summons.	Bailable	Not compoundable	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has right entitling him to pull it down or repair it.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant	Ditto	Ditto	Ditto	Ditto	Any Magistrate.
290	Committing a public nuisance	Shall not arrest without warrant	Ditto	Ditto	Ditto	Fine of 200 rupees.	Ditto
291	Continuance of nuisance after injunction to discontinue	May arrest without warrant	Ditto	Ditto	Ditto	Simple imprisonment for 6 months or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
292	Sale, etc., of obscene books, etc.	Ditto	Warrant	Ditto	Ditto	Imprisonment of either description for 3 months, or fine, or both	Presidency Magistrate or Magistrate of the first class.
293	Sale, etc., of obscene objects to young persons.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 6 months, or fine, or both.	Ditto

1	2	3	4	5	6	7	8
XLV of 1860 Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what court triable.
294	Obscene songs.	May arrest without warrant	Warrant	Bailable	Not compoundable.	Imprisonment of either description for 3 months or fine, or both.	Any Magistrate.
294 A	Keeping a lottery office.	Shall not arrest without warrant	Summons.	Ditto	Ditto	Imprisonment of either description for 6 months or fine or both.	Ditto
294 B	Publishing proposals relating to lotteries.	Ditto	Ditto	Ditto	Ditto	Fine of 1,000 rupees.	Ditto

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying damaging or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant	Summons.	Bailable	Not compoundable.	Imprisonment of either description for 2 years, or fine or both.	Presidency Magistrate or Magistrate of the first or second class.
295 A	Maliciously insulting the religion or the religious beliefs of any class.	Shall not arrest without warrant.	Warrant.	Not bailable	Ditto	Ditto	Court of Session or Presidency Magistrate.
296	Causing a disturbance to an assembly engaged in religious worship.	May arrest without warrant	Summons.	Bailable	Ditto	Imprisonment of either description for 1 year or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
297	Trespassing in place of worship or sepulture, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
298	Uttering any word or making any sound in the hearing or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feeling.	Shall not arrest without warrant	Ditto	Ditto	Compoundable.	Ditto	Ditto

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.
Of Offences affecting Life.

1	2	3	4	5	6	7	8
XL, or 140 Section	Offence	Whether the Police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not	Whether comm- poundable or not.	Punishment under the Indian Penal Code	By what Court triable
302	Murder	May arrest without warrant	Warrant	Not bailable	Not compoundable	Death or transportation for life and fine	Court of Session
303	Murder by a person under sentence of transportation for life	Ditto	Ditto	Ditto	Ditto	Death	Ditto
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, etc	Ditto	Ditto	Ditto	Ditto	Transportation for life or imprisonment of either description for 10 years and fine	Ditto
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, or fine, or both	Ditto
304 A	Causing death by rash or negligent act	Ditto	Ditto	Bailable	Ditto	Imprisonment of either description for 2 years, or fine, or both	Court of Session, Presidency Magistrate or Magistrate of the first class.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot or a person intoxicated.	Ditto	Ditto	Not bailable	Ditto	Death, or transportation for life, or imprisonment for 10 years and fine	Court of Session
306	Abetting the commission of suicide.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, and fine.	Ditto
307	Attempt to murder	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
	If such act cause hurt to any person.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or as above.	Ditto
	Attempt by life convict to murder, if hurt is caused.	Ditto	Ditto	Ditto	Ditto	Death, or as above.	Ditto

1	2	3	4	5	6	7	8
XLV of 1860, Section.	Offence.	Whether the Police may arrest, without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
308	Attempt to commit culpable homicide	May arrest without warrant	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
	If such act cause hurt to any person.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, or fine, or both.	Ditto
309	Attempt to commit suicide.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
311	Being a thug.	Ditto	Ditto	Not bailable	Ditto	Transportation for life and fine.	Court of Session.
<i>Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.</i>							
312	Causing miscarriage.	Shall not arrest without warrant	Warrant.	Bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session
	If the woman be quick with child.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto
313	Causing miscarriage without woman's consent.	Ditto	Ditto	Not bailable	Ditto	Transportation for life or imprisonment of either description for 10 years, and fine.	Ditto
314	Death caused by an act done with intent to cause miscarriage.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, and fine.	Ditto
	If act done without woman's consent.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or as above.	Ditto
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, or fine, or both.	Ditto

1	2	3	4	5	6	7	8
<i>XLV of 1860, Section.</i>	<i>Offence.</i>	<i>Whether the Police may arrest without warrant or not.</i>	<i>Whether a warrant or a summons shall ordinarily issue in the first instance</i>	<i>Whether bailable or not.</i>	<i>Whether compoundable or not.</i>	<i>Punishment under the Indian Penal Code.</i>	<i>By what Court triable.</i>
316	Causing done of a quick unborn child by an act amounting to culpable homicide	Shall not arrest without warrant	Warrant	Not bailable	Not compoundable.	Imprisonment of either description for 10 years, and fine	Court of Session.
317	Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it.	May arrest without warrant	Ditto	Bailable.	Ditto	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class
318	Concealment of birth by secret disposal of dead body.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine or both.	Ditto
<i>Of Hurt.</i>							
323	Voluntarily causing hurt.	Shall not arrest without warrant	Summons.	Bailable.	Compoundable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant	Ditto	Ditto	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 3 years, or fine, or both	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto

1	2	3	4	5	6	7	8
XLV of 1960, Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	May arrest without warrant	Summons.	Not bailable	Not compoundable.	Transportation for life or imprisonment of either description for 10 years, and fine.	Court of Session, - Presidency Magistrate or Magistrate of the first class.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	Ditto	Warrant.	Ditto	Ditto	Imprisonment of either description for 10 years, and fine.	Ditto
328	Administering stupefying drug with intent to cause hurt, etc.	Ditto	Ditto	Ditto	Ditto	Ditto	Court of Session.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, etc.	Ditto	Ditto	Bailable.	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, etc.	Ditto	Ditto	Not Bailable.	Ditto	Imprisonment of either description for 10 years and fine.	Ditto
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto	Ditto	Bailable.	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

1	2	3	4	5	6	7	8
XLV of 1860 Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
333	Voluntarily causing grievous hurt to a deter public servant from his duty	May arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment of either description for 1 year, and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant	Summons	Bailable.	Compoundable	Imprisonment of either description for 1 month or fine of 500 rupees, or both.	Any Magistrate
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation	May arrest without warrant	Ditto	Ditto	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others.	Ditto	Ditto	Ditto	Not compoundable.	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, etc.	Ditto	Ditto	Ditto	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	President Magistrate or Magistrate of the first or 2nd class.
338	Causing grievous hurt by an act which endangers human life, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, of 1,000 rupees, or both.	Ditto

1	2	3	4	5	6	7	8
XIV of 1840. Section	Offence	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not	Whether compoundable or not	Punishment under the Indian Penal Code	By what Court triable.
341	Wrongfully restraining any person	May arrest without warrant	Summons	Bailable	Compoundable	Simple imprisonment for 1 month or fine of 500 rupees, or both	Any Magistrate
342	Wrongfully confining any person.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for one year, or fine of 1,000 rupees, or both	Presidency Magistrate or Magistrate of the first or 2nd class.
343	Wrongfully confining for three or more days	Ditto	Ditto	Ditto	Compoundable when permission is given by the Court before which the prosecution is pending	Imprisonment of either description for 2 years or fine, or both	Ditto
344	Wrongfully confining for ten or more days	Ditto	Ditto	Ditto	Not compoundable	Imprisonment of either description for 3 years and fine	Court of Session, Presidency Magistrate or Magistrate of the first or 2nd class.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation	Shall not arrest without warrant	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto

1	2	3	4	5	6	7	8
XLV of Indian Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
346	Wrongful confinement in secret.	May arrest without warrant	Summons.	Bailable	Compoundable when permission is given by the Court before which the prosecution is pending.	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
347	Wrongful confinement for the purpose of extorting property or constraining to an illegal act, etc.	Ditto	Ditto	Ditto	Not compoundable.	Imprisonment of either description for 3 years, and fine.	Ditto
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling a restoration of property, etc.	Ditto	Ditto	Ditto	Ditto	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Criminal Force and Assault

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant	Summons.	Bailable	compoundable.	Imprisonment of either description for 8 months, or fine of 500 rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant	Ditto	Not compoundable.	Imprisonment of either description for 2 years, or fine or both.	Presidency Magistrate or Magistrate of the first or second class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto

1	2	3	4	5	6	7	8
<i>XLV of 1860 Section.</i>	<i>Offence.</i>	<i>Whether the Police may arrest without warrant or not.</i>	<i>Whether a warrant or a summons shall ordinarily issue in the first instance.</i>	<i>Whether bailable or not.</i>	<i>Whether compoundable or not.</i>	<i>Punishment under the Indian Penal Code.</i>	<i>By what court triable.</i>
355	Assault or Criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant	Summons.	Bailable	Compoundable	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant	Warrant	Not bailable	Not compoundable.	Ditto	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto	Ditto	Bailable	Compoundable, when permission is given by the Court before which the prosecution is pending.	Imprisonment of either description for 1 year or fine of 1,000 rupees or both.	Ditto
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant	Summons.	Ditto	Compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees or both.	Ditto

Of Kidnapping, Abduction, Slavery and Forced Labour.

363	Kidnapping ...	May arrest without warrant	Warrant	Bailable	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
364	Kidnapping or abducting in order to murder.	Ditto	Ditto	Not bailable	Ditto	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session Presidency Magistrate or Magistrate of the first class.

1	2	3	4	5	6	7	8
XLV of 1860. Sect. m.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, etc.	May arrest without warrant	Warrant	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
366 A	Procuration of minor girl.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
366 B	Importation of girl from foreign country.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery etc.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
368	Concealing or keeping in confinement a kidnapped person.	Ditto	Ditto	Ditto	Ditto	Punishment for kidnapping or abduction.	Court of Session, Presidency Magistrate or Magistrate of the first class. Ditto
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant	Ditto	Bailable	Ditto	Ditto	Court of Session.
371	Habitual dealing in slaves.	May arrest without warrant	Ditto	Not bailable	Ditto	Transportation for life or imprisonment of either description for 10 years, and fine.	Ditto
372	Selling or letting to hire a minor for purposes of prostitution, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class. Ditto
373	Buying or obtaining possession of a minor for the same purposes.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto

1	2	3	4	5	6	7	8
XLV of 1860, Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
374	Unlawful compulsory labour.	Shall not arrest without warrant	Warrant	Bailable	Compoundable.	Imprisonment of either description for 1 year, and fine.	Any Magistrate.
<i>Of Rape.</i>							
376	Rape— If the sexual intercourse was by a man with his own wife not being under 12 years of age. If the sexual intercourse was by a man with his own wife being under 12 years of age.	Shall not arrest without warrant Ditto	Summons. Ditto	Bailable Ditto	Not compoundable. Ditto	Imprisonment of either description for 2 years, or fine, or both. Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Chief Presidency Magistrate or District Magistrate. Court of Session.
	In any other case.	May arrest without warrants	Warrant	Not bailable	Ditto	Ditto	Ditto
<i>Of Unnatural Offences.</i>							
377	Unnatural offences.	May arrest without warrant	Warrant	Not bailable	Not compoundable.	Transportation for life or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.

Of Theft

379	Theft	May arrest without warrant	Warrant	Not bailable	Not compoundable.	Imprisonment of either description, for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent or vessel.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto
381	Theft by clerk or servant of property in possession of master or employer.	Ditto	Ditto	Ditto	Ditto	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

1	2	3	4	5	6	7	8
XLV of 1860, Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
392	Theft, preparation having been made for causing death, or hurt, or restraint or fear of death, or of hurt, or of restraint, in order to the committing of such theft, or to retiring after committing it, or to retaining property taken by it.	May arrest without warrant	Warrant.	Not bailable	Not compoundable.	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
<i>Of Extortion.</i>							
394	Extortion	Shall not arrest without warrant	Warrant	Bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
395	Extortion or attempting to put in fear of injury, in order to commit extortion.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine or both.	Ditto
396	Extortion by putting a person in fear of death or grievous hurt.	Ditto	Ditto	Not bailable	Ditto	Imprisonment of either description for 10 years, and fine.	Court of Session.
397	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto
398	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto	Ditto	Bailable	Ditto	Imprisonment of either description for 10 years, and fine.	Ditto
	If the offence threatened be an unnatural offence.	Ditto	Ditto	Ditto	Ditto	Transportation for life.	Ditto

1	2	3	4	5	6	7	8
XLV of 1860 Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what court triable.
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion. If the offence be an unnatural offence.	Shall not arrest without warrant	Warrant	Bailable	Not compoundable.	Imprisonment of either description for 10 years and fine. Transportation for life.	Court of Session. Ditto
<i>Of Robbery and Dacoity.</i>							
392	Robbery If committed on the highway between sunset and sunrise.	May arrest without warrant	Warrant	Not bailable	Not compoundable.	Rigorous imprisonment for 10 years, and fine. Rigorous imprisonment for 14 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the 1st class. Ditto
393	Attempt to commit robbery.	Ditto	Ditto	Ditto	Ditto	Rigorous imprisonment for 7 years, and fine.	Ditto
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto
395	Dacoity	Ditto	Ditto	Ditto	Ditto	Ditto	Court of Session.
396	Murder in dacoity.	Ditto	Ditto	Ditto	Ditto	Death, transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto
397	Robbery or dacoity, with attempt to cause death or grievous hurt.	Ditto	Ditto	Ditto	Ditto	Rigorous imprisonment for not less than 7 years.	Ditto
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto

1	2	3	4	5	6	7	8
XLV of 1960 Sect. on.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
399	Making preparation to commit dacoity	May arrest without warrant	Warrant.	Not bailable	Not compoundable	Rigorous imprisonment for 10 years and fine.	Court of Session.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing theft.	Ditto	Ditto	Ditto	Ditto	Rigorous imprisonment for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto	Ditto	Ditto	Ditto	Ditto	Court of Session.

Of Criminal Misappropriation of Property.

403	Dishonest misappropriation of moveable property or converting it to one's own use.	Shall not arrest without warrant	Warrant	Bailable.	Compoundable when permission is given by the Court before which the prosecution is pending.	Imprisonment of either description for 2 years or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it was not since been in the possession of any person legally entitled to it.	Ditto	Ditto	Ditto	Not compoundable.	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

1	2	3	4	5	6	7	8
XLV of 1860. Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
405 (Contd.)	If by clerk or person employed by deceased.	Shall not arrest without warrant	Warrant	Bailable	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
<i>Of Criminal Breach Of trust.</i>							
406	Criminal breach of trust.	May arrest without warrant	Warrant	Not bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine or both.	Court of Session Presidency Magistrate or Magistrate of the first or second class.
407	Criminal breach of trust by a carrier, wharfinger, etc	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
408	Criminal breach of trust by a clerk or servant.	Ditto	Ditto	Ditto	Ditto	Ditto	Court of session, Presidency Magistrate or Magistrate of the first class.
409	Criminal breach of trust by public servant or by banker, merchant, etc.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
<i>Of the Receiving of Stolen Property.</i>							
411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant	Warrant	Not bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity,	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment for 10 years, and fine.	Court of Session.
413	Habitually dealing in stolen property.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto

1	2	3	4	5	6	7	8
XLV of 1860 Sect.on.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
114	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant	Not bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Of Cheating.

417	Cheating	Shall not arrest without warrant	Warrant	Bailable	Compoundable when permission is given by the Court before which the prosecution is pending. Ditto	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate of the first or second class.
418	Cheating a person whose interest the offender was bound either by law or by legal contract, to protect.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
419	Cheating by personation.	May arrest without warrant	Ditto	Ditto	Ditto	Ditto	Ditto
420	Cheating and thereby dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Fraudulent Deeds and Disposition of Property.

421	Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	Shall not arrest without warrant	Warrant	Bailable	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or the first or second class.
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1	2	3	4	5	6	7	8
XLV of 1860. Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
421	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Shall not arrest without warrant.	Warrant.	Bailable	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
424	Fraudulent removal or concealment of property, of himself, or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto

Of Mischief.

426	Mischief	Shall not arrest without warrant	Summons.	Bailable	Compoundable when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto	Warrant	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	May arrest without warrant	Ditto	Ditto	Not compoundable.	Ditto	Ditto

1	2	3	4	5	6	7	8
XLV of 1860, Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, etc., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	May arrest without warrant	Warrant.	Bailable	Not compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, or Presidency Magistrate or Magistrate of the first or second class.
430	Mischief by causing diminution of supply of water for agricultural purposes, etc.	Ditto	Ditto	Ditto	Compoundable when permission is given by the Court before which the prosecution is pending.	Ditto	Ditto
431	Mischief by injury to public road, bridge, navigable river or navigable channel and rendering it impassable or less safe for travelling or conveying property.	Ditto	Ditto	Ditto	Not compoundable.	Ditto	Ditto
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
433	Mischief by destroying or moving or rendering less useful a light house or sea-mark, or by exhibiting false lights.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.

1	2	3	4	5	6	7	8
XLV of 1860, Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
434	Mischief by destroying or moving, etc., a land mark fixed by public authority.	Shall not arrest without warrant	Warrant	Bailable	Not compoundable.	Imprisonment of either description for 1 years or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant	Ditto	Ditto	Ditto	Imprisonment of either description for 7 year and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
436	Mischief by fire or explosive substance with intent to destroy a house, etc.	Ditto	Ditto	Not bailable	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, and fine.	Ditto
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto
439	Running vessel ashore with intent to commit theft, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years and fine.	Ditto
440	Mischief committed after preparation made for causing death, or hurt, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 5 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Criminal Trespass.

447	Criminal Trespass.	May arrest without warrant	Summons.	Bailable	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
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1	2	3	4	5	6	7	8
XIV of 1900 Section	Offence	Whether the Police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance	Whether bailable or not	Whether compoundable or not	Punishment under the Indian Penal Code	By what Court triable.
448	House-trespass	May arrest without warrant	Warrant	Bailable	Compoundable	Imprisonment of either description for one year or fine of 100 rupees or both	Any Magistrate
449	House-trespass in order to the commission of an offence punishable with death	Ditto	Ditto	Not bailable	Not compoundable	Transportation for life or rigorous imprisonment for 10 years, and fine	Court of Session
450	House-trespass in order to the commission of an offence punishable with transportation for life	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years and fine	Ditto
451	House-trespass in order to the commission of an offence punishable with imprisonment	Ditto	Ditto	Bailable	Compoundable when permission is given by the Court before which the prosecution is pending	Imprisonment of either description for 2 years and fine	Any Magistrate
	If the offence is theft.	Ditto	Ditto	Not bailable	Not compoundable	Imprisonment of either description for 7 years, and fine	Court of Session, Presidency Magistrate or Magistrate of the first or second class
452	House-trespass having made preparation for causing hurt, assault, etc	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
453	Lurking house-trespass or house-breaking.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, and fine.	Presidency Magistrate or Magistrate of the first or second class.

1	2	3	4	5	6	7	8
XLV of 1860 Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what court triable.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment. If the offence is theft.	May arrest without warrant	Warrant.	Not bailable	Not compoundable.	Imprisonment of either description for 3 years, and fine. Imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class. Ditto
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, etc.	Ditto	Ditto	Ditto	Ditto	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
456	Lurking house-trespass or house-breaking by night.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment. If the offence is theft.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 5 years, and fine. Imprisonment of either description for 14 years, and fine.	Ditto Ditto
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, etc.	Ditto	Ditto	Ditto	Ditto	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

1	2	3	4	5	6	7	8
XLV of 1900, Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, etc.	May arrest without warrant	Warrant	Not bailable.	Not compoundable.	Transportation for life or imprisonment of either description for 10 years, and fine.	Court of Session.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto	Ditto	Bailable	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same	Ditto	Ditto	Ditto	Ditto	In prisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

465	Forgery	Shall not arrest without warrant	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
466	Forgery of a record of a Court of justice or of a Register of Births, etc., kept by a public servant	Ditto	Ditto	Not bailable	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session.
467	Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money, etc.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto
	When the valuable security is a promissory note of the Central Government.	May arrest without warrant	Ditto	Ditto	Ditto	Ditto	Ditto

1	2	3	4	5	6	7	8
XLV of 1860. Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
468	Forgery for the purpose of cheating.	Shall not arrest without warrant	Warrant.	Not bailable	Not compoundable.	Imprisonment of either description for 7 years, and fine	Court of Session, Presidency Magistrate or Magistrate of the first class
469	Forgery for the purpose of harming the reputation of any person or knowing that it is likely to be used for that purpose.	Ditto	Ditto	Bailable	Ditto	Imprisonment of either description for 3 years, and fine.	Ditto
471	Using as genuine a forged document which is known to be forged	Ditto	Ditto	Ditto	Ditto	Punishment for forgery of such document.	Same Court as that by which the forgery is triable
	When the forged document is a promissory note of the Central Government.	May arrest without warrant	Ditto	Ditto	Ditto	Ditto	Court of Session
472	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate etc., knowing the same to be counterfeited.	Shall not arrest without warrant	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 7 years, and fine	Ditto
473	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate etc., knowing the same to be counterfeited.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto

1	2	3	4	5	6	7	8
XLV	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
474	Having possession of a document, knowing it to be forged with intent to use it as genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Shall not arrest without warrant	Warrant	Bailable	Not compoundable	Imprisonment of either description for 7 years and fine	Court of Session.
	If the document is one of the description mentioned in section 467 of the Indian Penal Code	Ditto	Ditto	Ditto	Ditto	Transportation for life or imprisonment of either description for 7 years, and fine	Ditto
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto	Ditto	Not bailable	Ditto	Imprisonment of either description for 7 years and fine	Ditto
477	Fraudulently destroying or defacing or attempting to destroy or deface, or secreting a will, etc.	Ditto	Ditto	Ditto	Ditto	Transportation for life or imprisonment of either description for 7 years, and fine.	Ditto
477 [A	Falsification of accounts.	Ditto	Ditto	Bailable	Ditto	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Trade and Property Marks.

1	2	3	4	5	6	7	8
XLV of 1860, Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
482	Using a false trade or property mark with intent to deceive or injure any person.	Shall not arrest without warrant	Warrant.	Bailable.	Compoundable when permission is given by the Court before which the prosecution is pending.	Imprisonment of either description for 1 year, or fine or both.	Presidency Magistrate or Magistrate of the first or Second class.
483	Counterfeiting a trade or property mark used by another with intent to cause damage or injury.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto
484	Counterfeiting a property mark used by a public servant, or any mark used by him to denote the manufacture, quality, etc., of any property.	Ditto	Summons.	Ditto	Not Compoundable.	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate or other instrument for counterfeiting any public or private property or trade mark.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both	Ditto
486	Knowingly selling goods marked with a counterfeit property or trade mark.	Ditto	Ditto	Ditto	Compoundable with permission of the Court before which the prosecution is pending.	Imprisonment of either description for 1 year or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

1	2	3	4	5	6	7	8
XIV of 1860 Section	Offence	Whether the Police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not.	Whether com-poundable or not	Punishment under the Indian Penal Code	By what Court triable.
157	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, etc	Shall not arrest without warrant	Summons	Bailable	Not compoundable	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Presidency Magistrate or Magistrate of the 1st or 2nd class.
489	Making use of any such false mark	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
137	Removing, destroying or defacing any property mark with intent to cause injury.	Ditto	Ditto	Ditto	Ditto	Ditto	Presidency Magistrate or Magistrate of the 1st or 2nd class

Of Currency Notes and Bank Notes

489 A	Counterfeiting currency notes or bank notes.	May arrest without warrant	Warrant	Not bailable	Not compoundable	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session
489 B	Using as genuine forged or counterfeit currency notes or bank notes.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
489 C	Possession of forged or counterfeit currency notes or bank notes.	Ditto	Ditto	Bailable	Ditto	Imprisonment of either description for 7 years, or fine, or both	Ditto
489 D	Making or possessing instruments or materials for forging or counterfeiting currency notes or bank notes.	Ditto	Ditto	Not bailable	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto

CHAPTER —IX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

1	2	3	4	5	6	7	8
XLV of 1930, Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Shall not arrest without warrant	Summons.	Bailable	Compoundable.	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to co-habit with him in that belief.	Shall not arrest without warrant	Warrant.	Not bailable	Not compoundable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
494	Marrying again during the lifetime of a husband or wife.	Ditto	Ditto	Ditto	Compoundable with permission of the Court before which the prosecution is pending.	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto	Ditto	Ditto	Not compoundable.	Imprisonment of either description for 10 years, and fine.	Court of Session.

1	2	3	4	5	6	7	8
XLV of 1860, Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married	Shall not arrest without warrant	Warrant	Bailable	Not com-poundable.	Imprisonment of either description for 7 years, and fine.	Court of Session
497	Adultery	Ditto	Ditto	Ditto	Com-poundable.	Imprisonment of either description for 5 years, or fine or both	Court of Session, Presidency Magistrate or Magistrate of the first class.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XXI.—DEFAMATION.

500	Defamation.	Shall not arrest without warrant.	Warrant	Bailable	Com-poundable.	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto

CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant	Warrant	Bailable	Com-poundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
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1	2	3	4	5	6	7	8
XLV of 1860. Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
505	False statement, rumour, etc., circulated with intent to cause mutiny or offence against the public peace.	Shall not arrest without warrant	warrant	Not bailable.	Not compoundable.	Imprisonment of either description for 2 years or fine, or both.	Presidency Magistrate or Magistrate of the first class.
506	Criminal intimidation.	Ditto	Ditto	Bailable	Compoundable.	Ditto	Presidency Magistrate or Magistrate of the first or second class.
	If threat be to cause death or grievous hurt, etc.	Ditto	Ditto	Ditto	Not compoundable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, in addition to the punishment under above section.	Ditto
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto	Ditto	Ditto	Compoundable	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Ditto	Ditto	Ditto	Compoundable when permission is given by the Court before which the prosecution is pending.	Simple imprisonment for 1 year, or fine or both.	Presidency Magistrate or Magistrate of the first class.
510	Appearing in a public place, etc., in a state of intoxication and causing annoyance to any person.	Ditto	Ditto	Ditto	Not compoundable.	Simple imprisonment for 24 hours or fine of 10 rupees, or both.	Any Magistrate.

1	2	3	4	5	6	7	8
XLV of 1930 Section.	Offence.	Whether the Police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence	According as the offence is one in respect of which the police may arrest without warrant or not	According as the offence is one in respect of which a summons or warrant shall ordinarily issue	According as the offence is contemplated by the offender is bailable or not	Compoundable when the offence attempted is compoundable.	Transportation or imprisonment not exceeding half of the longest term and of any description provided for the offence or fine or both	The Court by which the offence attempted is triable

OFFENCES AGAINST OTHER LAWS.

XVI of 1878	If punishable with death, transportation or imprisonment for 7 years or upwards	May arrest without warrant	Warrant	Not bailable	Not compoundable.	Court of Session.
	If punishable with imprisonment for 3 years and upwards, but less than 7 years	Ditto	Ditto	Not bailable, except in cases under the Indian Arms Act 1878, section 19, which shall be bailable	Ditto	...
	If punishable with imprisonment for one year and upwards, but less than 3 years.	Shall not arrest without warrant	Summons.	Bailable.	Ditto	...
	If punishable with imprisonment for less than one year, or with fine only.	Ditto	Ditto	Ditto	Ditto	...
						Court of Session, Presidency Magistrate or Magistrate of the first class.
						Court of Session, Presidency Magistrate or Magistrate of the first or second class. Any Magistrate.

SCHEDULE III

(See section 36).

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

I.—Ordinary Powers of a Magistrate of the Third Class.

- (1) Powers to arrest, or direct the arrest of, and to commit to custody a person committing an offence in his presence, section 64.
- (2) Power to arrest or direct the arrest in his presence of, an offender, section 65.
- (3) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sections 83, 84 and 86.
- (4) Power to issue proclamations in cases judicially before him, section 87.
- (5) Power to attach and sell property and to dispose of claims to attached property in cases judicially before him, section 88.
- (6) Powers to restore attached property, section 89.
- (7) Power to require search to be made for letters and telegrams, section 95.
- (8) Power to issue search-warrant, section 96.
- (9) Power to endorse a search-warrant and order delivery of thing found, section 99.
- (10) Power to command unlawful assembly to disperse, section 127.
- (11) Power to use civil force to disperse unlawful assembly, section 128.
- (12) Power to require military force to be used to disperse unlawful assembly, section 130.
- (13) * * *
- (14) Power to authorise detention not being detention in the custody of the police of a person during a police investigation, section 167.
- (14a) Power to postpone the issue of process and inquire into case himself, section 202.
- (15) Power to detain an offender found in Court, Section 351.
- (16) *
- (17) Power to apply to District Magistrate to issue commission for examination of witness, section 506 (2).
- (18) Power to recover forfeited bond for appearance before Magistrate's Court, section 514, and to require fresh security, section 514-A.
- (18a) Power to make order as to custody and disposal of property pending inquiry or trial, section 516-A.
- (19) Power to make order as to disposal of property, section 517.
- (20) Power to sell property of a suspected character, section 525.
- (31) Power to require affidavit in support of application, section 539-A.
- (22) Power to make local inspection, section 539-B.

II.—Ordinary Powers of a Magistrate of the Second Class.

- (1) The ordinary powers of a Magistrate of the third class.
- (2) Powers to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 156.
- (3) Power to postpone issue of process and to inquire into a case or direct investigation, section 202.
- (4) *

III.—Ordinary Powers of a Magistrate of the First Class.

- (1) The ordinary powers of a Magistrate of the second class.
- (2) Power to issue search-warrant otherwise than in course of an inquiry section 98.
- (3) Powers to issue search-warrant for discovery of persons wrongfully confined, section 100.
- (4) Power to require security to keep the peace, section 107.
- (5) Powers to require security for good behaviour, section 109.
- (6) Powers to discharge sureties, section 126-A.
- (6a) Power to make orders as to local nuisances, section 133.
- (7) Power to make order, etc., in possession cases, sections 145, 146 and 147.
- (7a) Power to record statements and confessions during a police investigation, section 164.

- (7aa) Power to authorise detention of a person in the custody of the police during a police investigation, section 167
- (7b) Power to hold inquests, section 174
- (8) Power to commit for trial, section 206
- (9) Power to stop proceedings when no complaint, section 219
- (9a) Power to tender pardon to accomplice during inquiry into case by himself, section 337
- (10) Power to make orders of maintenance sections 488 and 499
- (11) Power to take evidence on commission, section 503
- (12) Power to recover penalty on forfeited bond 514.
- (12a) Power to require fresh security, section 514A
- (12b) Power to re-call case made over by him to another Magistrate, section 528 (4)
- (13) Power to make order as to first offenders section 512
- (14) Power to order released convicts to notify residence section 515

IV—Ordinary Powers of a Sub-divisional Magistrate appointed under section 13

- (1) The ordinary powers of a Magistrate of the first class
- (2) Power to direct warrant to landholders section 78
- (3) Power to require security for good behaviour section 110
- (4) * * *
- (5) Power to make orders prohibiting repetition of nuisances, section 143
- (6) Power to make orders under section 154
- (7) Power to depute subordinate Magistrate to make local inquiry section 146.
- (8) Power to order police investigation into cognisable case, section 150.
- (9) Power to receive report of officer and pass order section 178.
- (10) * * *
- (11) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186
- (12) Power to entertain complaints section 190
- (13) Power to receive police reports section 190
- (14) Power to entertain cases without complaint, section 190
- (15) Power to transfer cases to a subordinate Magistrate, section 192.
- (16) Power to pass sentence on proceedings recorded by a subordinate Magistrate, section 349.
- (17) Power to forward record of inferior Court to District Magistrate, section 435 (2)
- (18) Power to sell property alleged or suspected to have been stolen etc., section 524
- (19) Power to withdraw cases other than appeals, and to try or refer them for trial, section 528.
- (20) * * *

V—Ordinary Powers of a District Magistrate

- (1) The ordinary powers of a Sub-divisional Magistrate
- (1a) Power to try juvenile offenders, section 29-B
- (2) Power to require delivery of letters, telegrams, etc., section 95
- (3) Power to issue search-warrants for documents in custody of postal or telegraph authority, section 96
- (4) Power to require security for good behaviour in case of sedition, section 103.
- (5) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124
- (6) Power to cancel bond for keeping the peace, section 125.
- (6a) Power to order preliminary investigation by police officer not below the rank of Inspector in certain cases, section 196-B
- (7) Power to try summarily, section 260
- (7a) Power to tender pardon to accomplice at any stage of a case, section 337.
- (8) Power to quash convictions in certain cases, section 350
- (9) Power to hear appeals from orders requiring security for keeping the peace or good behaviour, section 406.
- (9a) Power to hear appeals from orders of Magistrates refusing to accept or rejecting sureties, (section 406-A).

- (10) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
- (11) Power to call for records, section 435.
- (12) Power to order inquiry into complaint dismissed or case of accused discharged, section 436.
- (13) Power to order commitment, section 437.
- (14) Power to report case to High Court, section 438.
- (15) * * * *
- (16) * * * *
- (17) Power to appoint person to be public prosecutor in particular case, section 492 (2),
- (18) Power to issue commission for examination of witness, sections 503 and 506.
- (19) Power to hear appeals from or revise orders passed under sections 514, 515.
- (20) Power to compel restoration of abducted female, section 552.

SCHEDULE IV.

(See sections 37 and 38).

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED.

BY THE
PROVINCIAL
GOVERNMENT.

- (1) Power to require security for good behaviour in case of sedition, section 108:
- (2) Power to require security for good behaviour, section 110:
- (3) * * *
- (4) Power to make orders prohibiting repetitions of nuisances, section 143:
- (5) Power to make orders under section 144:
- (6) * * *
- (7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186:
- (8) Power to take cognizance of offences upon complaint, section 190:
- (9) Power to take cognizance of offences upon police reports section 190:
- (10) Power to take cognizance of offences without complaint, section 190:
- (11) Power to try summarily, section 260:
- (12) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407:
- (13) Power to sell property alleged or suspected to have been stolen, etc., section 524:
- (14) * * *
- (15) Power to try cases under section 124-A of the Indian Penal Code.

BY THE
DISTRICT
MAGISTRATE.

- (1) Power to make orders prohibiting repetitions of nuisances, section 143:
- (2) Power to make orders under section 144:
- (3) * * *
- (4) Power to take cognizance of offences upon complaint, section 190:
- (5) Power to take cognizance of offences upon police reports, section 190.
- (6) Power to transfer cases, section 192.

**POWERS WITH
WHICH A MAGIS-
TRATE OF THE
SECOND CLASS MAY
BE INVESTED.**

**BY THE
PROVINCIAL
GOVERNMENT.**

- (1) * *
- (2) Power to make orders prohibiting repetitions of nuisances, section 144 :
- (3) Power to make orders under section 144 :
- (3a) Power to record statements and confessions during a police investigation, section 174 :
- (3b) Power to authorise detention of a person in the custody of the police during a police investigation, section 167 :
- (4) Power to hold inquests, section 174 :
- (5) Power to take cognizance of offences upon complaint, section 190 :
- (6) Power to take cognizance of offences upon police reports, section 190 :
- (7) Power to take cognizance of offences without complaint, section 190 :
- (8) Power to commit for trial, section 206 :
- (9) Power to make order as to first offenders, section 562.

**BY THE
DISTRICT
MAGISTRATE.**

- (1) Power to make orders prohibiting repetitions of nuisances, section 143 :
- (2) Power to make orders under section 144 :
- (3) Power to hold inquests, section 174 :
- (4) Power to take cognizance of offences upon complaint, section 190 :
- (5) Power to take cognizance of offences upon police reports, section 190.

**POWERS WITH
WHICH A MAGIS-
TRATE OF THE
THIRD CLASS MAY
BE INVESTED.**

**BY THE
PROVINCIAL
GOVERNMENT.**

- (1) Power to make orders prohibiting repetitions of nuisances, section 143 :
- (2) * * *
- (3) Power to hold inquests, section 174 :
- (4) Power to take cognizance of offences upon complaint, section 190 :
- (5) Power to take cognizance of offences upon police reports, section 190
- (6) * * *

**BY THE
DISTRICT
MAGISTRATE.**

- (1) Power to make orders prohibiting repetitions of nuisances, section 143
- (2) * * *
- (3) Power to hold inquests, section 174]
- (4) Power to take cognizance of offences upon complaint, section 190
- (5) Power to take cognizance of offences upon police reports, section 190.

**POWERS WITH
WHICH A SUB-
DIVISIONAL MAGIS-
TRATE MAY BE
INVESTED.**

**BY THE
PROVINCIAL
GOVERNMENT.**

- Power to call for records, section 485.

SCHEDULE V.

(See section 555.)

FORMS.

1.—SUMMONS TO AN ACCUSED PERSON,

((See section 68.)

To _____ of _____
 WHEREAS your attendance is necessary to answer to a charge of (state shortly the offence charged), you are hereby required to appear in person (or by pleader, as the case may be) before the (Magistrate) of _____

_____ on the _____
 day of _____ Herein fail not.

Dated this _____ day of _____ 19 ____
 (Seal)

(Signature).

II.—WARRANT OF ARREST.

(See section 75.)

To (name and designation of the person or persons who is or are to execute the warrant)

WHEREAS _____ of _____ stands charged with the offence of (state the offence), you are hereby directed to arrest the said _____ and to produce him before me. Herein fail not.

Dated this _____ day of _____ 19 ____
 (Seal)

(Signature.)

(See section 76.)

This warrant may be endorsed as follows :—

If the said _____ shall give bail himself in the sum of _____
 with one surety in the sum of _____ (or two sureties each in the sum of _____)
) to attend before me on the _____ day of _____ and to continue so to attend until otherwise directed by me, he may be released.

Dated this _____ day of _____ 19 ____ (Signature).

III.—BOND AND BAIL—BOND AFTER ARREST UNDER A WARRANT.

(See section 86.)

I (name), of _____, being brought before the District Magistrate of _____ (or as the case may be) under a warrant issued to compel my appearance to answer to the charge of _____, do hereby bind myself to attend in the Court of _____ on the _____ day of _____ next, to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and, in case of my making default herein, I bind myself to forfeit, to His Majesty the King, Emperor of India, the sum of rupees _____. Dated this _____ day of _____ 19 ____ (Signature)

I do hereby declare myself surety for the abovenamed _____ of _____ that he shall attend before _____ in the Court of _____ on the _____ day of _____ next, to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I bind myself to forfeit to His Majesty the King, Emperor of India, the sum of rupees _____. Dated this _____ day of _____ 19 ____ (Signature).

IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(See section 87.)

WHEREAS complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of _____, punishable under section _____ of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (name) cannot be found and whereas

it has been shown to my satisfaction that the said (name) has absconded (or is concealing himself to avoid the service of the said warrant).

Proclamation is hereby made that the said _____ of _____ is required to appear at (place) before this Court (or before me) to answer the said complaint on the day of _____.

Dated this _____ day of _____ 19 ____.

(Seal.)

(Signature.)

V—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS

(See section 87.)

WHEREAS complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of (mention the offence concisely) and a warrant has been issued to compel the attendance of (name, description and address of the witness) before this Court to be examined touching the matter of the said complaint, and whereas it has been returned to the said warrant that the said (name of witness) cannot be served, and it has been shown to my satisfaction that he has absconded (or is concealing himself to avoid the service of the said warrant)

Proclamation is hereby made that the said (name) is required to appear at (place) before the Court of _____ on the _____ day of _____ next at _____ o'clock to be examined touching the offence complained of.

Dated this _____ day of _____ 19 ____.

(Seal.)

(Signature.)

VI—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS

(See section 88.)

To the Police-officer in charge of the Police-station at _____

WHEREAS a warrant has been duly issued to compel the attendance of (name, description and address) to testify (concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served, and whereas it has been shown to my satisfaction that he has absconded (or is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation has been or is being duly issued and published requiring the said _____ to appear and give evidence at the time and place mentioned therein

This is to authorise and require you to attach by seizure the movable property belonging to the said _____ to the value of rupees _____ which you may find within the District of _____ and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution

Dated this _____ day of _____ 19 ____.

(Seal.)

(Signature.)

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED.

(See section 88.)

To (name and designation of the person or persons who is or are to execute the warrant.)

WHEREAS complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of _____ punishable under section _____ of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (name) cannot be found; and whereas it has been shown to my satisfaction that the said (name) has absconded (or is concealing himself to avoid the service of the said warrant)

ing himself to avoid the service of the said warrant), and thereupon a Proclamation has been or is being duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village (or town) of , in the District of , viz., and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure and to hold the same, under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 19 .

(Seal.)

(Signature.)

ORDER AUTHORISING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(See section 88.)

To the Deputy Commissioner of the District of

WHEREAS complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (name) cannot be found; and whereas it has been shown to my satisfaction that the said (name) has absconded (or is concealing himself to avoid the service of the said warrant) and thereupon a Proclamation has been or is being duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of certain land paying revenue to Government in the village (or town) of in the District of

You are hereby authorised and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court and to certify without delay what you may have done in pursuance of this order.

Dated this day of 19 .

(Seal.)

(Signature.)

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(See section 90.)

To (name and designation of the Police-officer or other person or persons who is or are to execute the warrant.)

WHEREAS complaint has been made before me that of has (or is suspected to have) committed the offence of (mention the offence concisely), and it appears likely that (name and description of witness) can give evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorise and require you to arrest the said (name) and on the day of , to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this day of 19 .

(Seal.)

(Signature.)

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(See section 96.)

To (name and designation of the Police-officer or other person or persons who is or are to execute the warrant)

WHEREAS information has been laid (or complaint has been made) before me of the commission (or suspected commission) of the offence of (mention the offence concisely),

and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the inquiry now being made or about to be made into the said offence or suspected offence.

This is to authorise and require you to search for the said (*the thing specified*) in the (*describe the house or place or part thereof to which the search is to be confined*) and, if found, to produce the same forthwith before this Court, returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this
(Seal.)

day of 19
(Signature)

IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT
(See section 98)

To (*name and designation of a police officer above the rank of a constable*)

WHEREAS information has been laid before me, and on due inquiry thereupon had I have been led to believe that the (*describe the house or other place*) is used as a place for the deposit (or sale) of stolen property (or if either of the other purposes specified in the Act enstate the purpose in the words of the section),

This is to authorise and require you to enter the said house (or other place) with such assistance as shall be required, and to use if necessary, reasonable force for that purpose, and to search every part of the said house (or other place or is the search is to be confined to a part specify the part clearly) and to seize and take possession of any property (or documents or stamps or seals or coins or obscene objects, as the case may be) [Add (when the case requires it) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps or false seals, or counterfeit coins (as the case may be)], and forthwith to bring before this Court such of the said things as may be taken possession of returning this warrant with an endorsement certifying what you have done under it immediately upon its execution.

Given under my hand and the seal of the Court this
(Seal)

day of 19
(Signature)

X.—BOND TO KEEP THE PEACE
(See section 107)

WHEREAS I (*name*), inhabitant of (*place*), have been called upon to enter into a bond to keep the peace, for the term of or until the completion of the inquiry in the matter of now pending in the Court of , I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term or until the completion of the said inquiry and in case of my making default therein I hereby bind myself to forfeit to His Majesty the King, Emperor of India, the sum of rupees

Dated this day of 19

(Signature.)

XI.—BOND FOR GOOD BEHAVIOUR,
(See section 108, 109 and 110.)

WHEREAS I (*name*), inhabitant of (*place*) have been called upon to enter into a bond to be of good behaviour to His Majesty the King Emperor of India, and to all His subjects for the term of (*state the period*), or until the completion of the inquiry in the matter of now pending in the Court of , I hereby bind myself to be of good behaviour to His Majesty and all His subjects during the said term or until the completion of the said inquiry, and in case of my making default therein I bind myself to forfeit to His Majesty the sum of rupees

Dated this day of

(Signature.)

Where a bond with sureties is to be executed, add—We do hereby declare ourselves sureties for the abovenamed that he will be of good behaviour to His Majesty the King, Emperor of India, and to all His subjects during the said term or until the completion of the said inquiry; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the sum of rupees.

Dated this day of 19

(Signature.)

XII.—SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE.

(See section 114.)

To of

WHEREAS it has been made to appear to me by credible information that (*state the substance of the information*), and that you are likely to commit a breach of the peace (*or by which act a breach of the peace will probably be occasioned*), you are hereby required to attend in person (*or by duly authorised agent*) at the office of the Magistrate of on the day of 19 , at ten o'clock in the forenoon to show cause why you should not be required to enter into a bond for rupees (*when sureties are required, add, and also to give security by the bond of one (or two as the case may be), surety. (or sureties) in the sum of rupees (each if more than one) that you will keep the peace for the term of*

Given under my hand and the seal of the Court, this day of 19 .
(Seal.) (Signature.)

XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.

(See section 123.)

To the Superintendent (or Keeper) of the jail at

WHEREAS (*name and address*) appeared before me in person (*or by his authorised agent*) on the day of in obedience to a summons calling upon him to show cause why should not enter into a bond for rupees with one surety or a bond with two sureties each in rupees , that he, the said (*name*) would keep the peace for the period of months; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order;

This is to authorise and require you, the said Superintendent (or Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless he shall be in the meantime be lawfully ordered to be released and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 19 .
(Seal.) (Signature.)

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(See Section 123.)

To the Superintendent (or Keeper) of the jail at

WHEREAS it has been made to appear to me that (*name and description*) has been and is lurking within the District of having no ostensible means of subsistence (*or and that he is unable to give any satisfactory account of himself*);

WHEREAS it has been made to appear to me that you are the owner (or are in possession of or have the control over) a certain tank (or well, or excavation) adjacent to the public way (describe the thoroughfare), and that the safety of the public is endangered by reason of the said tank or well (or excavation being without a fence (or insecurely fenced):

or

WHEREAS, etc., etc., (as the case may be);

I do hereby direct and require you within (state the time allowed) to (state what is required to be done to abate the nuisance) or to appear at _____ in the Court of _____ on the _____ day of _____ next, and to show cause why this order should not be enforced;

or

I do hereby direct and require you within (state the time allowed) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, etc.;

or

I do hereby direct and require you within (state the time allowed) to put up a sufficient fence (state the kind of fence and the part to be fenced); or to appear, etc.;

or

I do hereby direct and require you, etc., (as the case may be).

Given under my hand and the seal of the Court, this _____ day of _____ 19 ____.
(Seal.) (Signature.)

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(See section 138.)

WHEREAS on the _____ day of _____ 19 __, an order was issued to (name) requiring him (state the effect of the order), and whereas the said (name) has applied to me, by a petition bearing date the _____ day of _____, for an order appointing a Jury to try whether the said recited order is reasonable and proper; I do hereby appoint (the names, etc., of the five or more Jurors) to be the Jury to try and decide the said question, and do require the said Jury to report their decision within _____

days from the date of this order at my office at _____

Given under my hand and the seal of the Court, this _____ day of _____ 19 ____.
(Seal.) (Signature.)

XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(See section 140.)

To (name, description and address).

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the _____ day of _____ have found that the order issued on the _____ day of _____ requiring you (state substantially the requisition in the order) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (state the time allowed), on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this _____ day of _____ 19 ____.
(Seal.) (Signature.)

XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY BY JURY.

(See section 142.)

To (name, description and address).

WHEREAS the inquiry by a Jury appointed to try whether my order issued on the _____ day of _____ 19 __, is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (state plainly what is required to be done as a temporary safe-guard) pending the result of the local inquiry by the Jury.

Given under my hand and the seal of the Court, this _____ day of _____ 19 ____.
(Seal.) (Signature.)

**XX—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, ETC.,
OF A NUISANCE,**

(See section 143.)

To (name, description and address)

WHEREAS it has been made to appear to me that, etc., (state the proper recital guided by form No XVI or Form No XXI, as the case may be).

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, etc., (as the case may be)

Given under my hand and the seal of Court this day of 19 .

(Seal.)

(Signature.)

XXI—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, ETC

(See section 144)

To (name, description and address)

WHEREAS it has been made to appear to me that you are in possession (or have the management) of (describe clearly the property) and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road,

or

WHEREAS it has been made to appear to me that you and a number of other persons (mention the class of person) are about to meet and proceed in a religious procession along the public street, etc., (as the case may be) and that such procession is likely to lead to a riot or an affray

or

WHEREAS, etc., etc., (as the case may be)

I do hereby order you not to place or permit to be placed any of the earth or stones dug from land on any part of the said road

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (or as the case recited may require).

Given under my hand and the seal of the Court this day of 19 .

(Seal.)

(Signature.)

**XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO
RETAIN POSSESSION OF LAND ETC., IN DISPUTE.**

(See section 145.)

It appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (describe the parties by name and residence, or residence only if the dispute be between bodies of villagers) concerning certain (state concisely the subject of dispute) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (the subject of dispute), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (name or names or description) is true,

I do decide and declare that he is (or they are) in possession of the said (the subject of dispute) and entitled to retain such possession until ousted by due course or law, and do strictly forbid any disturbance of his (or their) possession in the meantime.

Given under my hand and the seal of the Court, this day of 19 .

(Seal.)

(Signature.)

**XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE
AS TO THE POSSESSION OF LAND, ETC.**

(See section 146.)

To the Police-officer in charge of the police-station at _____ (or, to the collector of)

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers) concerning certain (state concisely the subject of dispute), situate within the limits of my jurisdiction and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (the subject of dispute) and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said (the subject of dispute) [or I am unable to satisfy myself as to which of the said parties was in possession as aforesaid];

This is to authorise and require you to attach the said (subject of dispute) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained, and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this _____ day of _____ 19 .
(Seal.) _____ (Signature.)

**XXIV.—MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANYTHING
ON LAND OR WATER.**

(See section 147.)

A dispute having arisen concerning the right of use of (state concisely the subject of dispute) situate within the limits of my jurisdiction, the possession of which land (or water) is claimed exclusively by (describe the person or persons) and it appearing to me on due inquiry into the same, that the said land (or water) has been open to the enjoyment for such use by the public (or if by an individual or a class of persons, describe him or them) and (if the use can be enjoyed throughout the year) that the said use has been enjoyed within three months of the institution of the said inquiry (or, if the use is enjoyable only at particular seasons, say "during the last of the seasons at which the same is capable of being enjoyed");

I do order that the said (the claimant or claimants of possession), or any one in their interest, shall not take (or retain) possession of the said land (or water) to the exclusion of the enjoyment of the right of the use aforesaid, until he (or they) shall obtain the decree or order of a competent Court adjudging him (or them) to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this _____ day of _____ 18 .
(Seal.) _____ (Signature.)

**XXV.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE
A POLICE-OFFICER.**

(See section 169.)

I (Name), of _____, being charged with the offence of _____, and after inquiry required to appear before the Magistrate of _____

_____ or _____
and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at _____, in the court of _____, on the _____ day of _____ next (or on such day as I may hereafter be required to attend) to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to His Majesty the King, Emperor of India, the sum of rupees _____.

Dated this _____ day of _____ 19 _____ (Signature.)

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the abovesaid that he shall attend at in the Court of , on the day of next (or on such day as he may hereafter be required to attend), further to answer to the charge pending against him and in case of his making default therein, I hereby bind myself (or we hereby bind ourselves) to forfeit to His Majesty the King Emperor of India the sum of rupees .

Dated this day of 19 .

(Signature)

XXVI.—BOND TO PROSECUTE OR GIVE EVIDENCE

(See section 170.)

I (name , of place do hereby bind myself to attend at in the Court of , at o'clock on the day of next and then and there to prosecute (or to prosecute and give evidence) (or to give evidence) in the matter of a charge of against one A B , and, in case of making default herein, I bind myself to forfeit to His Majesty the King, Emperor of India, the sum of rupees

Dated this day of 19 .

(Signature)

XXVII.—NOTICE OF COMMITMENT BY MAGISTRATE TO GOVERNMENT PLEADER.

(See section 218.)

The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions, and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that etc (state the offence as the charge.)

Dated this day of 19 .

(Signature.)

XXVIII.—CHARGES.

(See sections 221, 222 223.)

(1)—CHARGES WITH ONE HEAD.

(a) I (name and office of Magistrate etc) hereby charge you (name of accused person) as follows, —

(b) That you on or about the day of , at , waged war against His Majesty the King, Emperor of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session (when the charge is framed by a Presidency Magistrate, for Court of Session substitute High Court)

(c) And I hereby direct that you be tried by the said Court on the said charge.

[Signature and seal of the Magistrate.]

[To be substituted for (b) —

(2) That you, on or about the day of , at , with the intention of inducing the Hon'ble A. B. Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(3) That you, being a public servant in the _____ Department, directly accepted from [state the name], for another party [state the name],
 On section 161. a gratification other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

(4) That you, on or about the _____ day of _____, at _____, did [or omitted to do, as the case may be] such conduct being contrary to the provisions of Act _____, section _____, and known by you to be prejudicial to
 On section 166 and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

(5) That you on or about the _____ day of _____, at _____ in the course of the trial of _____, before _____, stated in evidence that " _____ " which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(6) That you, on or about the _____ day of _____, at _____, committed culpable homicide not amounting to murder, causing the death of _____, and thereby committed an offence punishable under section 301 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(7) That you, on or about the _____ day of _____, at _____, abetted the commission of suicide by A B, a person in a state of intoxication, and thereby committed an offence punishable under section 305 of the Indian Penal Code and within the cognizance of the Court of Session [or High Court]

(8) That you, on or about the _____ day of _____, at _____ voluntarily caused grievous hurt to _____, and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(9) That you, on or about the _____ day of _____, at _____, robbed [state the name], and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(10) That you, on or about the _____ day of _____, at _____, committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

[In cases tried by Magistrates substitute " within my cognizance " for " within the cognizance of the Court of Session," and in (c) omit " by the said Court ".]

(II)—CHARGES WITH TWO OR MORE HEADS

(a) I [name and office of the Magistrate etc.] hereby charge you [name of accused person] as follows, —

(b) First — That you, on or about the _____ day of _____, at _____ knowing a coin to be counterfeit, delivered the same to another person by name A B, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name A. B., to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

(c) And I hereby direct that you be tried by the said Court on the said charge.

[Signature and seal of the Magistrate.]

[To be substituted for (b)] —

(2) First.—That you on or about the day of , at , committed murder by causing the death of and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

Secondly —That you on or about the day of , at , by causing the death of committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(3) First —That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

Secondly That you on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code and within the cognizance of the Court of Session [or High Court]

Thirdly —That you on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

Fourthly.—That you on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(4) That you, on or about the day of , at , in the course of the inquiry into , before , stated in evidence that " " and that you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " " one of which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

[In cases tried by Magistrates substitute "within my cognizance" for "within the cognizance of the Court of Session" and in (c) omit 'by the said Court'].

(III)—CHARGE FOR THEFT AFTER PREVIOUS CONVICTION.

I (name and office of Magistrate, etc.) hereby charge you (name of the accused person) as follows.—

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code,

and within the cognizance of the Court of Session [or {High Court
Magistrate} as the case may be]

And you, the said (name of the accused), stand further charged that (you, before the committing of the said offence, that is to say on the day of , had been convicted by the (state Court by which conviction was had) at of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (describe the offence in the words used in the section under which the accused was convicted), which conviction is still in full force and effect and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code

And I hereby direct that you be tried, etc.

XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE

(See section 245 and 258)

To the Superintendent (or Keeper) of the Jail at .

WHEREAS on the day of 19 , (name of prisoner) the (1st, 2nd, 3rd as the case may be) prisoner in case No of the Calendar for 19 was convicted before me (name and official designation) of the offence (mention the offence or offences concisely) under section (or sections) of the Indian Penal Code (or of Act), and was sentenced to (state the punishment fully and distinctly)

This is to authorise and require you the said Superintendent (or Keeper), to receive the said (prisoner's name) into your custody in the said jail, together with his warrant, and there carry the aforesaid sentence into execution according to law

Given under my hand and the seal of the Court, this day of 19 .

(Seal)

(Signature .)

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY ATTACHMENT AND SALE

(See section 250)

To the Superintendent (or Keeper) of the Jail at .

WHEREAS (name and description) has brought against (name and description of the accused person) the complaint that (mention it concisely) and the same has been dismissed as false and frivolous (or vexatious), and the order of dismissal awarded payment by the said (name of the complainant) of the sum of rupees as amends, and whereas the said sum has not been paid and an order has been made for his simple imprisonment in jail for the period of days unless the aforesaid sum be sooner paid

This is to authorise and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid and on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution

Given under my hand and the seal of the Court, this day of 19 .

(Seal)

(Signature .)

XXXI.—SUMMONS TO WITNESS

(See sections 68 and 252)

of

To

WHEREAS complaint has been made before me that is (or is suspected to have) committed the offence of (state the offence concisely with time and place), and it appears to me that you are likely to give material evidence for the prosecution,

XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(See Section 381.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. of the Calendar at the session held before me on the day of . 19 , has been by a warrant of this Court, dated the day of , committed to your custody under sentence of death ; and whereas the order of the Court of confirming the said sentence has been received by the Court ;

This is to authorise and require you, the said Superintendent (or Keeper), to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead at (time and place of execution), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of 19 .
(Seal) (Signature.)

XXXVI.—WARRANT AFTER A COMMUTATION OF A SENTENCE.

(See Section 381 and 382.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS at Session held on the day of 19 . (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case no. of the Calendar at the said Session, was convicted of the offence of punishable under section of the Indian Penal Code and sentenced to and was thereupon committed to your custody ; and whereas by the order of the Court of (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for the life (or as the case may be.) ;

This is to authorise and require you, the said Superintendent (or Keeper), safely to keep the said (prisoner's name) in your custody in the said Jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order, or if the mitigated sentence is one of imprisonment, say after the words " custody in the said Jail " and " there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court, this day of 19 .
(Seal) (Signature)

XXXVII.—WARRANT TO LEVY A FINE BY ATTACHMENT AND SALE.

(See section 386 (1) (a).)

To (name and designation of the Police-officer or other person or persons who is or are to execute the warrant).

WHEREAS (name and description of the offender) was on the day of 19 . convicted before me of the offence of (mention the offence concisely), and sentenced to pay a fine of rupees and whereas the said (name), although required to pay the said fine, has not paid the same or any part thereof ;

This is to authorise and require you to attach any moveable property belonging to the said (name) which may be found within the District of ; and if within (state the number of days or hours allowed) next after such attachment the said sum shall not be paid (or forthwith), to sell the moveable property attached, or so much

This is to authorize and require you to take the said (name) into custody and him safely to keep in your custody for the space of _____ days unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law retaining this warrant with an endorsement certifying the manner of its execution

[illegible]

XL—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE
(See section 488)

To the Superintendent (or Keeper) of the Jail at

Will REAS (name, description and address) has been proved before me to be possessed of sufficient means to maintain his wife (name), [or his child (name) who is by reason of (state the reason) unable to maintain herself (or himself)], and to have neglected (or refused) to do so and in order has been duly made requiring the said (name) to allow to his said wife (or child) for maintenance the monthly sum of rupees _____ and whereas it has been further proved that the said (name) in wilful disregard of the said order has failed to pay rupees _____ being the amount of the allowance for the month or (or months) of _____. And thereupon an order was made adjudging him to undergo simple (or rigorous imprisonment) in the said Jail for the period of _____

This is to authorize and require you the said Superintendent (or Keeper) to receive the said (name) into your custody in the said Jail, together with this warrant and there to carry the said order into execution according to law, returning this warrant with an endorsement certifying the manner of its execution.

[illegible]

**XLI — WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY
ATTACHMENT AND SALE**

(See section 488.)

To (name and designation of the Police officer or other person to execute the warrant).

WHEREAS an order has been duly made requiring (name) to allow to his said wife (or child) or maintenance the monthly sum of rupees _____, and whereas the said (name) in wilful disregard of the said order has failed to pay rupees _____, being the amount of the allowance for the month (or months) of _____

THIS is to authorize and require you to attach any movable property belonging to the said (name) which may be found within the district of _____ and if within (state) _____ the number of days or hours allowed, next after such attachment the said sum shall not be paid (or forthwith) to sell the moveable property attached, or so much thereof as shall be sufficient to satisfy the said sum, returning this warrant, with an endorsement certifying what you have done under it immediately upon its execution.

Given under my hand and the seal of the Court, this _____ day of _____ 19 ____.

(Seal) _____ (Signature.)

XLII. BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A MAGISTRATE.

(See sections 496 and 499.)

I (name), of (place), being brought before the Magistrate of (as the case may be) charged with the offence of _____, and required to give security for my attendance in _____

and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and should the case be sent for trial by the Court of Session, to be, and appear before the said Court when called upon to answer the charge against me and in case of my making default herein, I bind myself to forfeit to His Majesty the King, Emperor of India, the sum of rupees _____,

Dated this _____ day of _____ 19 _____, (Signature.)

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the said (name) that he shall attend at the Court of _____ on every day of the preliminary inquiry into the offence charged against him, and should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him and in case of his making default therein, I bind myself (or we bind ourselves) to forfeit to His Majesty the King, Emperor of India, the sum of rupees _____.

Dated this _____ day of _____ 19 _____, (Signature.)

XLIII.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY

(See section 500.)

To the Superintendent (or Keeper of the Jail at _____ or other officer
in whose custody the person is _____)

WHEREAS (name and description of prisoner) was committed to your custody under warrant of this Court, dated the _____ day of _____ and has since with his surety (or sureties, duly executed a bond under section 499 of the Code of Criminal Procedure

This is to authorise and require you forthwith to discharge the said (name) from your custody, unless he is liable to be detained for some other matter

Given under my and the seal of the Court, this _____ day of _____ 19 _____.
(Seal.) (Signature.)

XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(See section 514.)

To the Police-officer in charge of the Police-station at _____

WHEREAS (name, description and address of person) has failed to appear on (mention the occasion) pursuant to his recognizance and has by such default forfeited to His Majesty the King, Emperor of India, the sum of rupees (the penalty in the bond); and whereas the said (name of person) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is to authorise and require you to attach any moveable property of the said (name) that you may find within the District of _____ by seizure and detention, if the said amount be not paid within three days, to sell the property so attached or so much of it as may be sufficient to realise the amount aforesaid and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this _____ day of _____ 19 _____.
(Seal.) (Signature.)

XLV.—NOTICE TO SURETY ON BREACH OF A BOND.

(See section 514.)

To _____ of _____

WHEREAS on the _____ day of _____, 19 _____, you became surety for (name) of (place), that he should appear before this Court on the _____ day of _____, and bound yourself

in default thereof to forfeit the sum of rupees to His Majesty the king Emperor of India; and whereas the said (name) has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees ;

You are hereby required to pay the said penalty or show cause within days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this day of 19 .

(Seal)

(Signature)

XLVI.—NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR,

(See section 514)

To of day , 19 , you became surety by a bond for (name) of (peace) that he would be of good behaviour for the period of and bound yourself in default thereof to forfeit the sum of rupees to His Majesty the King, Emperor of India; and whereas the said (name) has been convicted of the offence of (mention the offence concisely) committed since you became such surety, whereby your security bond has become forfeited;

You are hereby required to pay the said penalty of rupees or to show cause within days why it should not be paid.

Given under my hand and the seal of the Court, this day of 19 .

(Seal)

(Signature)

XLVII. WARRANT OF ATTACHMENT AGAINST A SURETY.

(See section 514.)

To of WHEREAS (name, description and address) has bound himself as surety for the appearance of (mention the condition of the bond) and the said (name) has made default, and thereby forfeited to his Majesty the King, Emperor of India, the sum of rupees (the penalty in the bond);

This is to authorize and require you to attach any moveable property of the said (name) which you may find within the district of , by seizure and detention, and, if the said amount be not paid, within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant, immediately upon its execution.

Given under my hand and the seal of the Court this day of 19 .

(Seal)

(Signature)

XLVIII.—WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL.

(See Section 514)

To the Superintendent (or Keeper) of the Civil Jail at

WHEREAS (name and description of surety) has bound himself as a surety for the appearance of (state the condition of the bond) and the said (name) has therein made default whereby the penalty mentioned in the said bond has been forfeited to His Majesty the King, Emperor of India; and whereas the said (name of surety) has, on due notice to him failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the Civil Jail for (specify the period);

This is to authorize and require you, the said Superintendent (or Keeper) of the, said Civil Jail, to receive said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment) and to return that warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this

day of 19 .

(Seal)

(Signature)

LII.—WARRANT OF ATTACHMENT AND SALE OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(See section 514.)

To the Police-officer in charge of the Police-station at

WHEREAS (name, description and address) did, on the day of 19 , gives security by bond in the sum of rupees for the good behaviour of (name) etc., of the principal), and proof has been given before me and duly recorded of the commission by the said (name) of the offence of whereby the said bond has been forfeited : and whereas notice has been given to the said (name) calling upon him to so cause why the said sum should not be paid, and he has failed to do so or to pay the said sum :

This is to authorize and require you to attach by seizure moveable property belonging to the said (name) to the value of rupees which you may find within the district of and if the said sum be not paid within , to sell the property so attached, or so much of it, as may be sufficient to realise the same, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this

day of 19 .

(Seal)

(Signature.)

LIII.—WARREN OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(See section 514.)

To the Superintendent (or Keeper) of the Civil Jail at.

WHEREAS (name, description and address) did, on the day of 19 .
give security by bond in the sum of rupees for the good behaviour of (name
etc., of the principal), and proof of the breach of the said bond has been given before
me and duly recorded, whereby the said (name) has forfeited to his Majesty the King
Emperor of India, the sum of rupees , and whereas he has failed to pay the said
sum or to show cause why the said sum should not be paid although duly called upon
to do so, and payment thereof cannot be enforced by attachment of his moveable prop-
erty, and an order has been made for the imprisonment of the said (name) in the
Civil Jail for the period of (term of imprisonment);

This is to authorize and require you, the Superintendent (or Keeper), to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment), returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this

day of 19 .

(Seal)

(Signature)

APPENDIX
THE
CRIMINAL RULES OF PRACTICE
(MADRAS)
AS AMENDED UP TO JULY 1946

THE CRIMINAL RULES OF PRACTICE

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APPENDIX.

THE CRIMINAL RULES OF PRACTICE & ORDERS.

(MADRAS)

(As amended upto 1st July 1946)

Whereas it is expedient to amend, consolidate and bring up to date the Criminal Rules of Practice and Executive Orders 1910, and incorporate therein the Orders, Notifications and Administrative Instructions issued from time to time by the Government and the High Court, the following Rules and Orders are made for the guidance of all Criminal Courts in the Presidency

PART I

Rules under or in matters relating to the Code of Criminal Procedure

CHAPTER I PRELIMINARY

1 Sunday shall be deemed a *dies non* and no cases shall be heard and Judicial work unless no judicial act formally annotated or done on a really urgent not to be done Sunday save in cases of absolute urgency

2 Every District Registrar appointed under the Indian Registration Act, 1908 shall be deemed to be a Civil Court within the meaning of sections 480 and 462 of the Code of Criminal Procedure

3 All proceedings of the Court of Session addressed to any Magistrate subordinate to the District Magistrate shall except in cases of urgency or when the law sanctions a different course be sent to the Magistrate concerned through the District Magistrate

In the cases above excepted a copy of the Sessions Court proceedings shall be sent to the Magistrate concerned and to the District Magistrate simultaneously

4 In calling for the records of an inferior Court under section 422 or 435 of the Code of Criminal Procedure Sessions Judges may address the Magistrates in whose custody the records are, without the intervention of the Magistrate of the district

5 The forms prescribed by these Rules shall be used for the respective purposes therein mentioned, with such variations as the particular circumstances of each case may require

EXTRADITION.

For the procedure relating to extradition see the Manual on the subject compiled and published by the Government in 1911,

5 A. In these rules unless there is anything repugnant in the subject or context, 'Government' means the 'Government of Madras'. (P. Dis. 409 of 1941)

CHAPTER II PROCESSES.

Summonses and Warrants.

6. Summonses issued to witnesses and jurors or assessors shall ordinarily be signed by the chief ministerial officer of the Court.
 Witness summonses may be signed by ministerial officer.

The words "By order of the Court" shall invariably be prefixed to the signature of the ministerial officer in such cases.

7. Magistrates shall themselves sign summonses to accused persons.
 Accused summons to be signed by Magistrate

8. Every summons and every adjournment shall state the place in which the case to which it relates will be heard.
 Place of hearing to be stated.

9. In all summonses issued by the Criminal Courts in the vernacular languages, the plural form of the pronoun shall be used in addressing the persons summoned.
 Plural to be used for persons summoned

10. The practice of using *facsimile* stamps for signing warrants or summonses is prohibited. All warrants should receive the sign manual of the Judge or Magistrate from whose Court they are issued.
 Warrant to bear sign manual of Judge or Magistrate.

11. When the District Magistrate is absent from headquarters he may have blank forms of summons to a juror, ready sealed, in the custody of the chief ministerial officer of his Court who will be responsible for them.
 Summoning of jurors when District Magistrate is absent from headquarters.

12. 1. Summonses to the following classes of medical officers in the medical subordinates how mutassals should be issued in the manner specified below:—

- (1) Government medical officers in Government medical institutions.
- (2) Government medical officers in local fund and municipal taluk head-quarters medical institutions.
- (3) Government medical officers lent for service in local fund and municipal medical institutions.
- (4) Local fund and municipal medical officers.
- (5) Rural medical practitioners in charge of local fund rural dispensaries (who are neither local fund servants nor Government servants).
- (6) Honorary medical officers.

In the case of all these classes of officers, summons should be served direct on the medical officers when their absence from the station is not involved, and the fact intimated to the District Medical Officer concerned for information.

2. In cases involving absence from the station, summons should be served through the District Medical officer in respect of all classes of medical officers referred to above except honorary medical officers. The District Medical Officer, while forwarding the summons to medical officers employed in local fund and municipal medical institutions, whether they are Government servants lent to local bodies or servants of the local bodies, should simultaneously send intimation to the president of the local board or the Chairman, Municipal Council concerned. The same procedure should be adopted in the case of rural medical practitioners also. The arrangement for the running of the medical institution will be

made by the District Medical Officer wherever he has to do so and, in other cases, by the President of the local board or the Chairman, Municipal Council concerned.

3. In the case of honorary medical officers the summons should be served through the Superintendent or Medical Officer in charge the medical institution so that he may make the necessary arrangements for the relief of the honorary medical officer.

4. In all cases where the time available to report to the medical institution is distant, a telegram may be sent [1 to 4 substituted by P.D. No. 113 of 11]

5. In cases where Superintendents of Hospital and Civil Surgeons are required to attend Criminal Courts to give evidence on professional matters the summons should be served on them direct without their absence from station is not involved but the fact should be intimated immediately to the Surgeon General with the Government of Madras. In the case of summons intended for District Medical Officers to attend Criminal Courts to give evidence on professional matters the summons need not be sent through the Surgeon General with the Government of Madras except in cases in which their absence from their jurisdiction is involved [G.O. No. 2005 Home dated 10th June 1914]

12A. Presiding officers of Courts should see that their special orders are taken before a summons is issued to medical witness and at a convenient date is fixed for his examination. If there is more than one medical officer in a Hospital only one officer should as far as possible be summoned at a time.

If possible it may be previously ascertained from the medical officer what time would best fit in with his professional duties. A medical witness should be summoned only when the presence of the accused is certain and when there is no likelihood of the case being adjourned for any other reason. The presiding officer of the court should see that the time fixed for the examination of the medical officer is adhered to and that the absence of the medical officer from his duties is as brief as possible [P.D. No. 579 of 1942]

13. When the serving officer delivers or tenders a copy of the summons to the person sought to be served personally or to an agent or other person on his behalf he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgement of service endorsed on the original summons.

In the case of illiterate persons their thumb impression should be taken.

14. All notices issued by the High Court under sections 422 and 439, clause (2) of the Code are issued in duplicate, and should be served as expeditiously as possible, and the duplicate copy with the endorsement of service, if effected, should be transmitted to the High Court without delay.

15. Criminal Courts issuing summonses for the attendance of officials of the Ceylon Government as witnesses under section 15 of the Fugitive Offenders Act, 1881 (44 and 45 Vic., ch. LXIX), shall forward a copy of every summons to the Hon'ble the Colonial Secretary to the Government of Ceylon with a covering letter leaving the legal service on the official to be effected as provided for in the Act. The summons shall allow sufficient time to enable the Ceylon Government to decide whether the officials could be spared at the time specified, and, if not, to ask the Court to fix a more convenient date.

16. When the production before a Criminal Court of this Presidency of a document in the custody of a Court or of a judicial officer in the French Settlements in India is considered necessary the usual form of summons addressed direct to the officer concerned shall not be issued but a letter of request embodying the necessary details, shall be forwarded to His Excellency the Governor of the French Settlements in India through the Special Agent, South Arcot.

The practice of addressing summons issued to secure the appearance of Indian witnesses from French territory to the 'Juges de Paix' of the French Colonies may continue, but the minatory clause should be removed from the form of summons before issue

16A When addressing summons to secure the appearance of witnesses residing in Mysore State the minatory clause in Judicial Form No. 39 shall be removed from the form of summons before issue [*P. Dis No. 945 of 1941.*]

OF THE PRODUCTION OF PRISONERS TO GIVE EVIDENCE OR ANSWER A CHARGE

17 When an application is made to the High Court for the issue of orders for the production of a prisoner before a Court to give evidence under Part IX of the Prisoners Act III of 1900, the Court making the application shall state concisely the nature of the evidence which the prisoner is expected to give and how it is material to the trial concerned in order that the High Court may be in a position to decide whether an order shall be made for the production of the prisoner. The approximate distance between the jail where the prisoner is confined and the Court where his evidence is required as well as the approximate time that may be required to convey the prisoner, shall also be stated in every case

18. In cases committed to a Court of Session, the application to the High Court for the issue of an order directing the production of a prisoner for the purpose of giving evidence in such Court shall be made by the Sessions Judge and not by Committing Magistrate.

19 All Criminal Courts shall note carefully the distinction between section 37 and 39 of the Prisoners Act, III of 1900 where the attendance of a prisoner is required to answer a charge and not to give evidence, section 39 of the Act has no application the proper course being for the Court itself to issue the order for the production of the prisoner under section 37 of the Act and send it countersigned by the District Magistrate, if necessary, to the officer in charge of the prison

20. No State prisoner or prisoner under sentence of death, shall be removed under the Prisoners' Testimony Act, from the jail in which he may be confined without the special sanction of Government provided that, in the case of a prisoner under sentence of death, such prisoner may be removed from the jail without such sanction if his presence is required by a Sessions or High Court and for the purpose of taking additional evidence in the case under section 428 of the Code of Criminal Procedure. In all other cases in which the evidence of such a prisoner is required, the Court shall proceed to the jail and there record the evidence of the prisoner, unless the Government has sanctioned his removal from the prison to the Court-house for the purpose, [Rule made by the Government under the Prisoners' Testimony Act, 1869, now the Prisoners' Act, III of 1900]

21. Magistrates shall not issue warrants for the production of convicts imprisoned in Mysore jails to give evidence in the Courts in British India in any case; the evidence of such a convict appears to be essential the proper course is to issue a commission for his examination to the Political officer

PROCEDURE IN CASES IN WHICH AN ACCUSED PERSON IS ABSCONDING

22. When process has been issued for the attendance of the accused but the case has remained pending for a long time owing to his non appearance and the Magistrate is satisfied that the presence of the accused cannot be secured within a reasonable time or when an accused person found to be of unsound mind is released under section 466 (1) or detained in safe custody under section 466 (2) of the Code of Criminal Procedure the Magistrate shall report the case for the orders of the District Magistrate through the Sub divisional Magistrate, if any and the District Magistrate may if he thinks fit order that the case shall be removed from the register of cases received and omitted from the quarterly returns. The case shall however, then be entered in a separate register of long pending cases which shall be maintained by all Magistrates in Administrative Form No 20. If at any future time the accused person is apprehended or appears or ceases to be insane as the case may be the case against him shall be treated as a new case, entered accordingly in the register of cases received and dealt with according to law

23 When there are several accused persons in a case and only some of them have appeared or been produced before the Court if the Magistrate is satisfied that the presence of other accused cannot be secured within a reasonable time, having due regard to the right of such of the accused as have appeared to have the case against them enquired into without delay, he shall proceed with the case as against such of the accused as have appeared and dispose of it according to law. As regards the accused who have not appeared, he shall give the case a new number and enter it in the register of cases received, and if it remains pending for a long time, and efforts to secure the presence of the accused have failed, and the case against the accused who have appeared has been disposed of, the Magistrate shall report the whole matter as regards all the accused to the District Magistrate, through the Sub divisional Magistrate, if any, and the District Magistrate may direct that the case against the absent accused be removed to the 'Register of long pending cases' or if the District Magistrate is of opinion that the case against the absent accused is wholly false he may direct that the case be omitted from the registers and the returns altogether, provided that he may at any subsequent time order the case to be entered in the register of long pending cases.

24. Before directing the transfer of a case, other than a case dealt with under section 466 (1) or (2) of the Code of Criminal Procedure, to the 'Register of long pending cases,' the District Magistrate shall satisfy himself that all reasonable steps have been taken to follow the procedure prescribed in section 87 and 88, and also, when practicable, that the provisions of sections 512 of the Code of Criminal Procedure have been complied with.

25. If subsequently the absent accused or any of them are produced, or appear before the Magistrate, or the accused who was insane ceases to be insane, the case against them shall be registered under a new number; provided that where the charge is withdrawn or the accused is reported dead, the case should be closed and need not be given a fresh number.

26. Rules Nos. 22 to 25 shall apply as far as may be, to cases where an accused person has appeared but has subsequently absconded after appearance.

CHAPTER III—GENERAL RULES RELATING TO ENQUIRIES AND TRIALS

PLEADERS.

Memoranda of appearance.

27. Every pleader, as defined in section 4 (r) of the Code of Criminal Procedure, or other than an Advocate or a Public Prosecutor, appearing for the prosecution in any criminal proceedings, shall file in Court a vakalatnama from his client authorizing him so to appear. Every such pleader defending an accused person and every Advocate appearing in any criminal proceedings in any Court shall be required to file a memorandum of appearance containing a declaration that he has been duly instructed to appear by, or on behalf of, the party whom he claims to represent.

Notes.—Vakalat need not be filed in a Criminal Appeal for proper presentation. Memorandum of appearance is sufficient, 1924 M. W. N 51

28. (1) Save as provided in Paragraph 3 of this rule, every *Vakalatnama* shall be executed, or its execution attested, before a Judicial functionary, a gazetted officer, or a member of the Legislative Council, or of the Legislative assembly of the province or before a member of a District Educational Council or of a member of the District Board or Panchayat constituted under the Madras Local Boards Act, 1920, a Municipal Councillor, an Assistant Monigar or other Assistant Village Headman, or any person upon whom a title has been conferred by Government or a retired Gazetted Officer receiving a pension from Government, or before a Commissioned Military Officer of the A.F.I. stationed in the Anamalais, or the Manager of the Office of the Board of Commissioners for the Hindu Religious Endowments or any Superintendent or Inspector working under the Board, or in the City of Madras before any sub Registrar, who shall subscribe his own signature, adding his designation on the *Vakalatnama* in authentication of its execution or attestation.

2. Provided that when a *Vakalatnama* is executed by any person, who appears to the officer before whom it is executed by any person, who appears to the officer before whom it is executed or the execution is attested, to be illiterate, blind or unacquainted with the language in which the *Vakalatnama* is written, the officer shall certify that the *Vakalatnama* was read and translated or explained in his presence to the executant, that he seemed to understand it and that he made his signature or mark in the presence of the officer.

3. When the executant to a *Vakalatnama* is himself a public officer or whose signature a Court must take judicial notice, authentication on the *vakalatnama* shall not be necessary.

4. A statement of the pleader's address for service shall be endorsed on the *Vakalatnama* and subscribed with his own signature by the pleader.

Note :—In the case of Sub Registrars the Government direct that they shall attest the execution of *Vakalatnama* only in cases in which they know the parties

personally or in which the Vakalatnamas are presented by persons who appear before them for the registration of documents and whose identity has been proved in connection with the registration of those documents and they shall not hold special enquiries in this connection [P Dis 409 of 1941]

29. Notwithstanding the termination of all proceedings in the trial or enquiry the appointment of a pleader in a criminal case shall unless otherwise provided for therein, or determined by the death of the party engaging him or of the pleader or by revocation in due course be deemed to authorize him to appear or to make any application or to do any act in connection with getting copies of judgments or other documents

A pleader or an advocate shall not be entitled to take delivery of property or documents on behalf of his client in the absence of a provision for such delivery in his vakalat, or a power of attorney specially authorizing him to take delivery of the property or documents.

PUBLIC PROSECUTOR

30. A Public Prosecutor shall be appointed for each sessions division. The appointment shall be made for a term of three years on the nomination of the District Magistrate who shall consult the Sessions Judge before submitting his nomination to Government; but the Government is not precluded from reconsidering the appointment, if it thinks fit before the close of that period.

31. The Public Prosecutor shall appear to conduct a prosecution only under instructions from the District Magistrate. All other officers who require his assistance in the conduct of criminal cases should communicate with the District Magistrate.

32. Deleted.

33. The public Prosecutor has been appointed as the proper person to whom notice of appeal shall be given by Courts of Session, under section 422, Code of Criminal Procedure. He should then appear in every such appeal unless he receives instructions to the contrary from the District Magistrate.

33-A. On receipt of notice of an application for bail under Section 427 of the Code of Criminal Procedure, 1898 the Public Prosecutor, concerned shall consult the Public Prosecutor, Madras and obtain his instructions [G. O. Mis. No. 5315, Home dated 7th January 1943].

34. The District Magistrate will determine what fee is payable to the District Magistrate to Public Prosecutor under the rules.

35. If the services of the Public Prosecutor, Madras, are required in a Criminal Court in the *mufassal*, the District Magistrate shall make an application therefor to Government in the Home Department. [P. Dis. No. 409 of 41]

36. Every appointment of a Public Prosecutor shall be reported to the High Court by the Sessions Judge of the district concerned who shall also forward for its information a copy of the order of the appointment.

APPLICATIONS AND APPEALS UNDER SECTIONS 476, 476-A AND B AND 485 OF THE CODE OF CRIMINAL PROCEDURE.

37. Every application made to a Criminal Court under the provisions of sections 476, 476-A or 485, of the Code of Criminal Procedure and every appeal filed against an order made under the above sections, or filed in a Court of Session against an order of a Court of Small Causes in the mufassal under section 486 of the Code of Criminal Procedure shall be registered as a Criminal Miscellaneous Petition and a Criminal Appeal respectively. Such applications and appeals when filed in a Civil Court will be registered as Civil Miscellaneous Petitions and Civil Miscellaneous Appeals,

This rule applies to Revision Petitions also

Notes—This rule which prescribes a different procedure in case of appeals filed under S. 476-B Cr. P. Code is not in consonance with procedure 1939 M. 439. See also 87 M. 177.

APPLICATION UNDER SECTION 520, CRIMINAL PROCEDURE CODE

38. Every application to a Criminal Court under section 520 of the Code of Criminal Procedure should be registered as a Criminal Miscellaneous Petition and dealt with as such.

STRIKING OFF CASES.

39. There is no provision of law which sanction the 'Striking off' from the file of a Court of a case in which an accused person has once appeared or been brought before the Court. All such cases are duly disposed of (a) by withdrawal when it is allowed by law, (b) by discharge, (c) by acquittal or conviction, (d) by committal, or (e) in the case of a lunatic, by the submission of the prescribed report to Government. If no evidence is produced against an accused person, not being a person incapable of making his defence by reason of unsoundness of mind, he should, after a reasonable time, be discharged. If there is evidence, the Court should proceed to discharge, acquit, convict or commit the accused.

Where the Court is satisfied that an accused person has died, the charge abates, and the case may be closed.

INVESTIGATION AND PROSECUTION BY POLICE.

40. Head constables in charge of Police outpost are empowered to hold investigations under section 174 (1) of the Code of Criminal Procedure. Such investigations should, however, whenever possible, be held by the Sub-Inspector and in his absence ordinarily by the Village headman who is empowered to do so under section 174 (4) of the Criminal Procedure Code; and head-constables in charge of outposts should conduct these investigations in the absence of the Sub-Inspector only in cases where the Village headman is absent or where serious delay would occur in obtaining his services.

41. Under section 7 of the Madras City Police Act, 1888, the Commissioner of Police is empowered to order the investigation by the Police of all non-cognizable cases under sections 155 and 202, Criminal Procedure Code.

42 All cases in which the prosecution of a Government servant is contemplated by the Police should be reported to the District Magistrate before the prosecution is instituted. This rule shall not however apply to cases of police subordinates prosecuted under the Madras District Police Act, XXIV, of 1859.

43. No officer below the rank of a head constable shall be permitted to conduct a prosecution under section 495 Code of Criminal Procedure.

Note.—Before permitting head constables under this rule to conduct prosecutions Magistrates should satisfy themselves that the cases are of a simple character, such as can be properly entrusted to them and that the services of the ordinary prosecution staff are not available.

REMANDS

44. Whenever a Magistrate, other than a District or sub Divisional Magistrate, remands an accused person to the custody of police under section 167 of the Code of Criminal Procedure, 1898 a copy of the order of remand with the recorded reason therefor shall be forwarded within 24 hours to the Magistrate to whom he is immediately subordinate. [*P. Dis No. 201 of 1943*]

45. [*Omitted by P. Dis No. 201 of 1943*]

46. When an accused is brought before a subordinate Court under Section 427 of the Code of Criminal Procedure 1898 the Court shall explain fully to him the provisions of rules 228 and 240-A and the procedure of the High Court with regard to the posting and hearing of appeals embodied in rules 214, 216 and 217. If the accused is remanded to custody, the Court shall forthwith report the action taken to the High Court and if the warrant issued by the High Court was a bailable warrant, also state its reasons for remand and shall forward a copy of the said report to the District Magistrate who will communicate with the Public Prosecutor, Madras. [*P. Dis No. 164 of 1943.*]

47. Affidavits intended for use in judicial proceedings may be sworn before whom may be before any Court or Magistrate, including a village Magistrate, or a sub Registrar, Nazir, or Deputy Nazir or Assistant Nazir, or a Member of the Legislative Council or of the Legislative Assembly of the Province or a member of the District Educational Council, or a District Board Member or a Municipal Councillor or any person on whom a title has been conferred by Government or a retired Gazetted Officer receiving a pension from Government or a Commissioned Military Officer of the A. F. I stationed in the Anamalais, or the Manager of the Board of Commissioners for Hindu Religious Endowments, or any Superintendent or Inspector working under the Board. [*P. Dis. 409 of 1941.*]

48. Before any affidavit is used it shall be filed in Court, but the Judge may, with the consent of both parties, or in case of urgency, allow any affidavit to be presented to the Court and read on the hearing of an application.

49. Every affidavit shall be drawn up in the first person, and divided into paragraphs numbered consecutively; and each paragraph, as nearly as may be, shall be confined to a distinct portion of the subject.

50. Every affidavit shall state the full name, age, description, and place of abode of the deponent, and shall be signed or marked by him. Except in the case of an European, or Anglo-Indian, the description shall include the father's name and the caste of the deponent.

51. When an affidavit covers more than one sheet of paper, the writing shall be on both sides of the sheet and the deponent shall sign his name at the foot of each page of the affidavit.

52. Alteration and interlineation shall, before an affidavit is sworn or affirmed, be authenticated by the initials of the officer before whom the affidavit is taken, and no affidavit having therein any alteration or interlineation not so authenticated or any erasure, shall, except with the leave of the Court, be filed or made use of in any matter.

53. The officer before whom an affidavit is taken shall state the date on which, and the place where, the same is taken, and sign his name and description at the end, otherwise the same shall not be filed or read in any matter without the leave of the Court.

54. When an affidavit is sworn or affirmed by any person who appears blind or illiterate to the officer taking the affidavit to be illiterate deponent, blind, or unacquainted with the language in which the affidavit is written, the officer shall certify that the affidavit was read, translated or explained in his presence to the deponent, that the deponent seemed to understand it, and made his signature or mark in the presence of the officer, otherwise the affidavit shall not be used in evidence.

55. Every affidavit shall bear an endorsement stating on whose behalf it is filed.

56. Every affidavit stating any matter of opinion shall show the qualification of the deponent to express such opinion, by reference to the length of experience, acquaintance with the person or matter to which the opinion is expressed, or other means of knowledge of the deponent.

57. Every affidavit containing statements made on the information or belief of the deponent shall state the source or ground of the information or belief.

58. Documents referred to by affidavit shall be referred to as exhibits and shall be marked in the same manner as exhibits admitted by the Court and shall bear a certificate signed by the officer before whom the affidavit is taken.

59. The Court may at any time direct that any person shall attend on to be cross-examined on his affidavit.

OATHS AND AFFIRMATIONS.

60. Form (1) and (2) under each of the headings I, II, III and IV are to be used in case of Christian witnesses, deponents, interpreters and jurors. In the case of Hebrews, the same forms shall be used, the Pentateuch being substituted for the Bible.

The officer whose duty it is to administer the oath shall inform each Christian or Hebrew to Christian or Hebrew witness, deponent, interpreter select the form of oath. or juror, as the case may be, of the two forms of oath which are permissible—the form which involves kissing the book, and the form which dispenses with it—and shall ask him to select the form by which he wishes be sworn.

Form No. (3) under each of the headings I, II, III and IV is to be used Forms for non-Christians in affirming witnesses, deponents interpreters and and non-Hebrews. jurors who are not Christians or Hebrews.

Form No. (4) under each of the headings I, II, III and IV may be used in place of Form No. (3) in the case of children, Forms for children, etc. and persons who object to use Form No. (3).

The oath or affirmation shall not be administered to a deponent to an Oath or affirmation by affidavit unless the officer whose duty is to take person who understands, affidavits is satisfied that he understands the nature and contents of the affidavits

I.—Oaths and Affirmations to be taken by a Witness.

(1) Form of oath—

The witness shall stand up and raise his right hand above his head while repeating the following words —“I, A. B., swear by Almighty God that the evidence I shall give to the Court touching the matters in question shall be the truth, the whole truth and nothing but the truth”

(2) Form of oath—

The witness shall hold a copy of the Bible in his right hand and shall kiss the book, after the words following have been pronounced by the officer administering the oath:—“A. B, the evidence you shall give to the Court touching the matters in question, shall be the truth, the whole truth, and nothing but the truth. So help you God”.

(3) Form of affirmation—

The witness shall say as follows — ‘I, A.B., solemnly affirm in the presence of Almighty God that the evidence I shall give to the Court touching the matters in question shall be the truth, the whole truth, and nothing but the truth”.

(4) Form of affirmation for children and persons who object to use Form No. (3)—

The witness shall say as follows:—“I, A.B. solemnly, sincerely, and truly declare and affirm that the evidence I shall give to the Court touching the matters in question shall be the truth, the whole truth, and nothing but the truth”.

II.—Oaths and Affirmations to be taken by the Deponent to an Affidavit.

(1) Form of oath—

The deponent shall, after signing his name, stand up and raise his right hand above the head, and shall repeat the words following:—“I swear by Almighty God that that is my name and handwriting, and that the contents of this my affidavit are true”.

(2) Form of oath—

The deponent shall hold a copy of the Bible in his right hand and shall say “I do” and kiss the book after the words following have been pronounced

by the officer administering the oath —"You do swear that that is your name and handwriting, and that the contents of this your affidavit are true So help you God".

(3) Form of affirmation—

The deponent shall, after signing his name, say as follows:—"I, A B solemnly affirm in the presence of Almighty God that that is my name and handwriting, and that the contents of this my affidavit are true".

(4) Form of affirmation to be used in case of persons who object to the use of Form No (3)—

The deponent shall, after signing his name, say as follows —"A B. do solemnly, sincerely and truly declare and affirm that that is my name and handwriting, and that the contents of this my affidavit are true".

(5) Form of oath or affirmation by an illiterate deponent—

The deponent shall affix his mark to the affidavit, and the officer administering the oath or affirmation shall write the name of the deponent over against the mark and read it to the deponent and then the form and words prescribed by Form No (1), (2), (3) or (4) shall be used, the word "mark" being used instead of "handwriting"

III.—Oaths and Affirmations to be administered to an Interpreter other than a Court Interpreter.

(1) When the evidence is to be given *viva voce*—

The oath or affirmation shall be administered in the manner prescribed by part I of this Rule except that the substance of the oath or affirmation shall be —"I shall well and truly interpret the oath that shall be administered, and the questions that shall be put to the witness, as also the answers that he shall make to all such questions, to the best of my skill and knowledge."

(2) Where the evidence is to be given upon affidavit or affirmation—

The oath or affirmation shall be administered to the interpreter in the manner prescribed by Part I of this Rule except that the substance of the oath or affirmation shall be.—"I well understand the . . . language, and I have truly, distinctly and audibly interpreted the contents of this affidavit (or affirmation) to the deponent A B., and I will truly and faithfully interpret to him the oath (or affirmation) about to be administered to (or made by) him."

IV.—Oaths and affirmations to be taken by Jurors.

(1) Form of oath—

The juror shall stand up and raise his right hand above his head while repeating the following words.—"I swear by Almighty God that I will judge truly between His Majesty the King Emperor of India and the prisoner at the Bar, and will a true verdict give according to the evidence."

(2) Form of oath—

The juror shall hold a copy of the Bible in his right hand and shall kiss the book after the words following have been pronounced by the officer administering the oath —"You shall well and truly try and true deliverance make between His Majesty the King Emperor of India and the prisoner at the Bar, and a true verdict give according to the evidence. So help you God."

(3) Form of solemn affirmation—

The juror shall say as follows —"I solemnly affirm in the presence of Almighty God that I will judge truly between the King Emperor of India and

the prisoner at the Bar, and will a true verdict give according to the evidence."

(4) Form of affirmation for persons who object to use the preceding Form—

"I, A.B., solemnly, sincerely and truly declare and affirm that I will judge truly between His Majesty the King Emperor of India and the prisoner at the Bar, and will a true verdict give according to the evidence."

TRANSFERS.

61. (1) When a District Magistrate considers that a criminal case should be transferred from the Court of the Sessions Judge having jurisdiction within his district he shall address the Public Prosecutor Madras requiring him to make one or more of the motions indicated in clauses (i) (ii) (iii) (iv) of sub-section (1) of section 526 of the Code of Criminal Procedure 1898. It should be stated under which clause (a), (b), (c), (d) or (e) of the above sub-section the case falls, and the reasons for requesting that a motion for transfer should be made should be stated in full detail.

(2) Before moving the High Court, the Public Prosecutor shall refer the request to the Government, expressing his opinion thereon and shall obtain their orders.

62. Every application for transfer of a case presented independently or against an order of a Subordinate Criminal Court making or refusing to make an order of transfer shall be filed and registered as a Criminal Miscellaneous Petition and not as a Revision Petition.

COMMISSIONS.

63. Commissions in criminal cases issued by French Courts for the examination of witnesses residing within the jurisdiction of any Criminal Court in this Presidency, shall be executed by such Court free of cost any expenditure incurred on account of batta and travelling expenses of witness being debited to the contingent fund of such Court.

OF THE TAKING AND RECORDING OF EVIDENCE.

64. Though the Code of Criminal Procedure does not provide that the deposition when to be signed by them, the practice of requiring them to sign the record of their depositions, when taken down in their own language, should be continued.

Notes.—The Magistrate reading the depositions of a witness after the days' work is an illegality vitiating the trial 49 M. 71; 1927 M.W.N. 123 (P.C.). Asking the witness to go through his own evidence is not compliance with the section, and it is desirable that the depositions be read over so that, the accused or his pleader can hear them and have an opportunity of correcting them. 54 I A 96 (P.C.)

64-A. In every case in which the precise age of an accused person is Evidence as to the age relevant to the determination of the sentence or order to be passed evidence should be taken on the question and whenever necessary the opinion of a medical expert should be obtained. [P. Dis. 865 of 1937.]

65. When the deposition of a gosha woman has to be taken, the Evidence of gosha women. Court should, if necessary, adjourn to a place where the witness can be examined with due regard to her privacy, in the presence of the accused, precautions being of course taken to make sure of her identity.

66. It is entirely within the discretion of the presiding Judge to require a witness to stand or permit him to sit. Allowing witness to sit or stand.

67. Police officers should not, as a rule, be employed to interpret the evidence of witnesses in cases prosecuted by the police. Police not to interpret evidence.

68. All Sessions Judges and District Magistrates and the Chief Presidency Magistrate, Madras, are authorised to incur expenditure to a limit not exceeding Rs. 40/- in each case on account of interpretation of evidence in a language not understood by the accused or in a language other than the language of the Court and not understood by the pleader of the accused or by the Court. District Magistrates and the Chief Presidency Magistrate, Madras, are also empowered within the limit prescribed, to pass similar charges incurred by Divisional Magistrates and other Magistrates subordinate to them. [P. Dis. No. 406 of 1940.] Charges for interpretation.

69. Exhibits admitted in evidence shall be marked, if put in by the prosecution, with the capital letters of the alphabet; and if put in by the defence with Latin numerals. If the capital letters of the alphabet are exhausted double capitals shall be used. Marking of Exhibits.

A series of similar exhibits may be marked with the same capital letter and Arabic numerals in brackets when put in by the prosecution; or with Latin numerals and small letters of the alphabet in brackets when put in by the defence.

Court exhibits and material objects should be marked as such in Arabic numbers and material objects should be numbered in continuous series whether exhibited by the prosecution, or the defence, or the Court.

CHARGES.

70. If it is proposed to prove several previous convictions against an accused person for the purpose of affecting his punishment, they should not be lumped in one head of charge, but should be set forth separately, each under a distinct head of charge. Charges of previous conviction to be set out separately.

71. The person against whom an offence is alleged to have been committed should be described in the charge by his name and not by his accidental position in the case as prosecutor or witness. Complainant how to be described in a charge.

71-A. Every time an enquiry or trial is adjourned, an order of the Court in writing giving the reasons therefor shall be recorded. The reason for which Reasons for adjournment to be recorded. an adjournment can be granted may either be the absence of a witness or any other reasonable cause as stated in section 344 of the Code of Criminal Procedure. Adjournments should not ordinarily be granted in order to give time to pleaders to prepare their address to the Court as this will lead to unnecessary delay in the disposal of cases.

JUDGMENTS AND CALENDARS

72. When enhanced punishment is awarded on account of previous convictions, the Calendar to state whether previous conviction was proved or confessed, should appear in the calendar that the previous conviction was charged and proved or confessed.

73. The judgment in original decisions shall be in the form prescribed by the Code of Criminal Procedure section 307, with a footnote or sidenote in tabular form, giving in addition the following particulars viz —

for judgment in trials

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Only two copies in manuscript of the statement are required, one copy for record and one for transmission to the High Court. The one for record may conveniently be written up in a list to be bound up by way of index with the printed judgments for each year.

But in cases under the Madras Traffic Rules, 1938 and the prevention of Cruelty to Animals Act 1890 the copy for record need not be prepared [P. Dis No. 89 of 1943.]

74. There shall be appended to every judgment a list of the witnesses examined by the prosecution and for the defence and to be appended to judgment, also a list of exhibits and material objects.

JUDGMENT ON CONVICTION FOR TWO OR MORE OFFENCES.

75. When an offender is convicted of two or more offences and it is competent to the Court to award more than one sentence, the Court shall in its judgment declare in respect of which offence or offences any sentence awarded is imposed.

76. When an accused person is convicted under a section of the Indian Penal Code e.g., section 454, which contains several sub-sections with different punishments prescribed for the various offences dealt with the judgment shall state under which sub-sections the accused was charged and convicted.

CALANDARS IN SENTENCES OF FINE.

77. Any Magistrate sentencing an accused person to the payment of a fine with imprisonment in default of such payment should allow him reasonable facilities for the payment of the fine. The calendars in such cases should contain information in the column 'or remarks as to the payment of the fine and the orders passed to facilitate such payment.

78. In cases where Government officials are charged with criminal offences, copies of judgments and orders, and where they are in a vernacular language, translations thereof in English shall be furnished by the Court to the heads of departments concerned, free of charge.

79. When a Sessions case, Criminal Appeal or Revision case is remanded, readmitted, or transferred from one Court to another, the date for purposes of calculating its duration shall be the date of commitment of the accused in Sessions cases and the date of original institution in Criminal Appeals and Revision cases. A record of dates of remand, readmission or transfer.

CHAPTER IV. MAGISTRATES' COURTS.

PRIVATE PLEADERS

80. The Code of Criminal Procedure gives to every Magistrate a discretion to permit persons, other than legal practitioners authorized by any other law to practise in such Court, to act in criminal proceedings before him. This discretion is to be exercised by the Magistrate according to the circumstances of each individual case, and in deciding whether permission should be given or not, the character of the person appointed is one of the matters to be taken into consideration. It would be a wrong use of the discretion to grant such permission to a person of bad character or to one who has been convicted of a criminal offence, or whose character or conduct is such that he would have been suspended or dismissed if he had been a regular pleader.

81. The practice of allowing unlicensed persons to appear as pleaders systematically and as a matter of course is reprehensible. Having regard to the large number of qualified practitioners now available in every part of the Presidency, the discretion to permit "private pleaders" to appear and argue cases should be exercised as sparingly as possible, and when such permission is granted the reasons for granting it must be recorded in writing. In general no person who is not a qualified legal practitioner should be permitted to act except to prevent a possible miscarriage of justice.

Provided always that these instructions shall not apply to persons who prior to 18th October 1899 were practising as private pleaders.

82. Criminal Courts should, as a rule in cases where there are more than one accused, permit any one of them to be authorized by any other to appear, plead or act for such other in any criminal proceeding, but the authority shall be in writing and shall contain the signature or the thumb impression of the party giving it, and shall be filed in Court.

Notes.—The rule does not authorize a co-accused advocate to appear as counsel for another 1941 M.W.N 683, Cr. 87.

STATEMENTS AND CONFESSIONS

83 Village Magistrates are absolutely prohibited from reducing to writing any confession or statement whatever made by an accused person after the police investigation has begun.

84. An accused person desiring to make a confession shall ordinarily make the confession before a Salaried Magistrate or the First or Second Class Magistrate.

85 (1) No Magistrate shall record any statement or confession made by an accused person under section 164 of the Code of Criminal Procedure (1) until the Magistrate has first recorded in writing his reasons for believing that the accused is prepared to make the statement voluntarily and (2) until he has explained to the accused that he is under no obligation to answer any question at all and has warned the accused that it is not intended to make him an approver and that anything he says may be used against him.

(2) Before recording a statement the Magistrate shall question the accused in order to ascertain the exact circumstances in which his confession is made and the extent to which the police have had relations with the accused before the confession is made.

The Magistrate may usefully put the following questions to the accused—

- (a) When did the police first question you?
- (b) How often were you questioned by the police?
- (c) Were you detained anywhere by the police before you were taken formally into custody and if so, in what circumstances?
- (d) Were you urged by the police to make a confession?
- (e) Have the statements you are going to make been induced by any ill-treatment? And if so, by whom?
- (f) Do you understand that the statement which you are about to make may be used against you at your trial?

The questions and any others which may suggest themselves and the answers to them shall be recorded by the Magistrate before he records the accused's statement and shall be appended to the memorandum prescribed by section 164 (3) of the Code of Criminal Procedure. The Magistrate shall add to the memorandum a statement in his own hand of the grounds on which he believes that the confession is voluntary and shall note the precautions which he took to remove the accused from the influence of the police and the time given to the accused for reflection.

(3) If the Magistrate has any doubt whether the accused is going to speak voluntarily he may, if he thinks fit, remand him to a sub-jail, before recording the statement, and ordinarily the accused shall be withdrawn from the custody of the police for 24 hours before his statement is recorded. When it is not possible or expedient to allow so long a time as 24 hours the Magistrate shall allow the accused at least a few hours for reflection.

(4) The statement of the accused shall not be recorded, nor shall the warning prescribed in paragraph (1) of this rule be given nor shall the question prescribed in paragraph (2) of this rule be asked in the presence of a co-accused or of the police officers who have arrested him or produced him before the Magistrate or who have investigated the case.

(5) The Magistrate shall record the confession in open Court and during the Court hours, save for exceptional reasons. He shall record the confession

in as much detail as possible, and the record of the confession shall contain the fullest possible particulars of the incidents involved

Notes—(See S 164 Criminal Procedure Code) Confession is not to be rejected merely because a formal question set out in the rule was not asked I L R 1938 Mid 348 Magistrate not complying with provisions of this rule but deposing that he was sure that accused confessed voluntarily confession is not inadmissible 1932 M W N 714 Cr 150 Bt where Magistrate did not warn at all and rule is not observed the confession is vitiated, 1937 M W N 178 Cr 34 Nothing in the rule that administration of warning should be recorded Omission does not invalidate confession 1937 M W N 562 Cr 122 Omission to observe any one of requirements does not vitiate confession if properly recorded under S 164 Cr P Code 1937 M W N 977 Cr 193 Omission to observe the rule shall not *per se* invalidate the confession without regard to other circumstances 1935 M W N 809 Cr 137 It would save trouble if magistrates would frame their questions in accordance with those under the rule 1934 M W N 601 Cr 105 Meaning of 'urged' scope of inquiry 1937 M W N 993, Cr 203 Magistrate should find exact circumstances under which confession is made 1938 M W N 24, Cr 1 Omission to comply with requirement of this rule will not vitiate the confession provided S 164 Cr P Code is complied with 1938 M. W N 90 Cr 18

86 (1) Magistrates shall not grant remands to police custody unless they are Investigating Police officer satisfied that there is good ground for doing so and shall not accept a general statement made by the accused, not to communicate with prisoners in sub jails investigating or other Police officer to the effect that the accused may be able to give further information Where the object of a remand is the verification of an accused's statement he shall whenever possible be remanded to the charge of a Magistrate and the period of remands shall be as short as possible

(2) When application for remand is made to a Magistrate of a class lower than the second class the Magistrate shall direct the police to go to a Magistrate of a higher class

(3) An accused who has been produced before a Magistrate for the purpose of making a confession and who has declined to make it or has made a statement which from the point of view of the prosecution is unsatisfactory shall not be remanded to police custody If he is remanded to other custody the investigating police officers shall not except in the presence of the Magistrate be allowed either to see him again or to have any further communication with him

(4) It is the duty of Magistrates who remand accused persons to custody other than that of the police and of Magistrates in executive charge of sub jails to which accused persons are remanded to guard with the greatest care against the possibility of any undue influence

Notes—Order of Commissioner of Police remanding to Police custody accused (approver) who refused to make a statement is improper 1946 M W N Cr 9

DIARY

87 Every Magistrate shall maintain a diary in Administrative Form No 11 The diary shall show the time at which the criminal proceedings of each day commenced and the time at which they ended and shall indicate clearly the daily progress made in the hearing of each case in the order in which each was taken up The entries shall be initialled by the Magistrate on the day of to which they relate

88 Magistrates shall take serious notice of any omission to prepare and submit for their signature daily the magisterial diary prescribed by Rule 67

89 When a case is committed for trial before the Court of Session or referred to another Magistrate an extract from this diary shall be placed with the record.

Extracts

90. It shall be competent to the Sessions Judge, or the District Magistrate, to call for original or other first class Magistrate upon cause shown, to call for the original diary of any subordinate Magistrate, in order to satisfy himself that the extract submitted is a correct transcript of the entries relating to the case or that such entries have not been subsequently altered.

REGISTER OF PRELIMINARY INQUIRIES

91 [Deleted by *P Dis No 680 of 1935*]

92 Where a person accused of an offence triable only by the Court of Session is discharged or the complaint against him is dismissed the Magistrate shall forward within 48 hours to that Court a statement of the case in Administrative Form No. 9 [P Dis No 680 of 1935]

Forwarding a statement to Sessions Court when a sessions case is dismissed or accused is discharged

93 When committing an accused person for trial before a Court of Session the Magistrate shall place with the record a statement of the case in Administrative Form No. 29 [P Dis No 680 of 1935]

A statement of the case to be placed with committal record

CASES TRIABLE EITHER BY A MAGISTRATE OR A COURT OF SESSION

94. Charges which are triable either by a Magistrate of the first class or a Court of Session should as a rule be laid before the first class Magistrate and not before a second or third class Magistrate who can only deal with the offence by way of committal to the Court of Session. If the first class Magistrate finds that owing to the existence of aggravating circumstances, he cannot pass any adequate sentence he can commit the accused to the Court of Session under section 347 of the Code of Criminal Procedure.

95. Cases in which persons accused of offences punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, such persons having been previously convicted of offences punishable under either of those Chapters with imprisonment for a term of three years or upwards, shall not be forwarded by Subordinate Magistrates to District or Sub-divisional Magistrates under section 349 of the Code of Criminal Procedure, but shall be committed to the Court of Session under section 348, if the Magistrate trying the case is of opinion that he cannot himself pass an adequate sentence.

96. To prevent the time of Courts of Session being taken up in trying cases which could be adequately disposed of by a Magistrate of the first class, all such charges should be laid before, or transferred to, a Magistrate of the first class.

97. When a Subordinate Magistrate acts irregularly under section 349 of the Code instead of proceeding under section 348, it is open to the District Magistrate, if he thinks that a Magistrate of the first class can pass an adequate sentence, to take the case on to his own file, or transfer it to that of some other first-class Magistrate, the proceedings in either case, of course being taken *de novo*.

Notes.—Irregularity in proceeding under section 349 instead of under S. 348 can be cured by reference under the rule to the District magistrate 1941 M. W. N. 524 Cr. 64,

98. When two or more persons are jointly charged with an offence and the jurisdiction of the Magistrate is ousted in the case of one the Magistrate should hold a preliminary enquiry and if necessary, commit both or all for trial before the Court of Session

TRANSFER OF CASES TO TAHSILDAR-MAGISTRATES

99 In taluks where there are Stationary Sub Magistrates, Tahsildar-Magistrates are not invested with power to take cognizance of offences under section 190 of the Code of Criminal Procedure, or to commit cases under section 206 of the Code but they are nevertheless competent to try cases transferred to them under section 192 or section 528 of the Code. It is not, however, intended that Tahsildar-Magistrates in such taluks should ordinarily exercise their magisterial powers and District and Divisional Magistrates should understand that it is not desirable to transfer cases to Tahsildar Magistrates in taluks where there are Stationary Sub Magistrates

FOREST CASES

100 Sub-divisional Magistrates should from time to time take a few forest cases on their files at short notice and at convenient opportunities at the same time avoiding the summoning of witnesses and accused persons to any considerable distance from their villages

CASES UNDER SECTION 144 CRIMINAL PROCEDURE CODE

101 Whenever a Magistrate takes action under section 144 of the Code of Criminal Procedure or any analogous provision of law he should immediately communicate a copy of his order to the Civil Court having Original Jurisdiction over the locality to which his proceedings refer. Similarly, the Civil Court will communicate to the Magistrate having local jurisdiction any injunction issued by it with reference to matters which would fall within the scope of section 144 Criminal Procedure Code

SHORT-TERM IMPRISONMENTS

102. The Government consider the awarding of short-term imprisonments as undesirable and Magistrates before passing such sentences, should consider whether imprisonments till the rising of the Court allowed by law could not appropriately be passed instead, or the provisions of section 562, Criminal Procedure Code, applied in favour of accused persons

In awarding sentences in default of payment of fines, regard should always be had to the status of accused persons and the sentences should be so regulated as to induce them to pay them and not to evade such payment

Notes —Imprisonment till rising of the Court is legal I. L. R. 1945 Mad. 529.]

RULES IN RESPECT OF COMPOUNDING FEES RECEIVED BY MAGISTRATES IN FOREST AND EXCISE CASES.

103. (1) The amount of composition fee or expenses of prosecution and Composition fees, etc., the account to which it is paid to the Magistrate, viz., in forest and excise cases, "composition fee or expenses of prosecution" should be shown in the order of acquittal

If the payment has been made to a Forest officer or an Excise officer, his receipt should be produced before the Magistrate and the details of it, date, number, etc., should be given in the order of acquittal.

(2) All fees and expenses received by the Magistrate shall be remitted to the Treasury without delay. They should be entered separately in the Remittance book in Administrative Form No. 56, "Forest Composition Fees", or "Expenses of Prosecution" as the case may be.

(3) All composition fees and expenses paid to the Magistrate should be shown in red ink in column 9 of the Fine Register (Criminal Register No. 20), a separate total being struck for each of the heads of account to which they are credited every month.

MAINTENANCE CASES

Grounds to be set out in order

104 The grounds upon which an order awarding maintenance is based should be set out in the order itself.

PROCEDURE WHERE ACCUSED PERSON IS LIABLE TO BE TRIED BY COURT MARTIAL

105 (1) Where a person subject to military, naval or air force law is brought before a Magistrate and charged with an offence for which he is liable under the Army Act the Naval Discipline Act the Navy Discipline Act, as modified by the Indian Navy (Discipline) Act 1934, or the Air Force Act to be tried by a court-martial such Magistrate shall not proceed to try such person, or to issue orders for his case to be referred to a Bench, or to inquire with a view to his commitment for trial by the Court of Session or the High Court for any offence triable by such Court, unless—

(a) he is of opinion for reasons to be recorded that he should so proceed without being moved thereto by competent military, naval or air force authority, or

(b) he is moved thereto by such authority.

(2) Before proceeding under clause (a) of Rule 1 the Magistrate shall give five days notice by notice to the Commanding Officer of the accused and until the expiry of a period of five days from the date of the service of such notice, he shall not—

(a) acquit or convict the accused under section 243, 245, 247 or 248 of the Code of Criminal Procedure, 1898 (Act V of 1898), or hear him in his defence under section 244 of the said Code, or

(b) frame in writing a charge against the accused under section 254 of the said Code; or

(c) make an order committing the accused for trial by the High Court or the Court of Session under section 213 or sub-section (1) of section 446 of the said Code; or

(d) issue orders under sub-section (1) of section 445 of the said Code for the case to be referred to a Bench.

(3) Where within the period of five days mentioned in Rule 2, or at any time thereafter before the Magistrate has done any act or issued any order referred to in that rule, the Commanding Officer of the accused gives notice to the Magistrate that in the opinion of competent military, naval or air force authority, as the case may be, the accused should be tried by a court-martial, the Magistrate shall stay proceedings and, if the accused is in his power or under his control, shall deliver him, with the statement prescribed by section 549 of the said Code to the authority specified in the said section.

(4) Where a Magistrate has been moved by competent military, naval or air force authority as the case may be, under Clause (b) of Rule 1, and the Commanding Officer of the accused subsequently gives notice to such Magistrate that, in the opinion of such authority, the accused should be tried by a court-martial, such Magistrate, if he has not before receiving such notice done any act or issued any order referred to in Rule 2, shall stay proceedings and, if the accused is in his power or under his control, shall in the like manner deliver him, with the statement prescribed in section 549 of the said Code to the authority specified in the said section.

(5) Where an accused person, having been delivered by the Magistrate under Rule 3 or 4, is not tried by a court-martial for the offence of which he is accused, or other effectual proceedings are not taken, or ordered to be taken, against him, the Magistrate shall report the circumstance to the local Government

(6) In these rules "competent military authority" means the Brigade Commander, "competent Naval authority" means The Flag Officer Commanding Royal Indian Navy or The Flag Officer, Bombay or the Commodore, Bay of Bengal, and competent Air Force authority" means The Air Officer Commanding-in-Chief, Air Force in India, or the Air Officer Commanding, Bengal, or any Air Force group Commander.

(As amended by P. Dis. No. 680 of 43 and P Dis No. 30 of 45.)

105 A In all cases where Commissioned Officers and British other ranks have been tried for criminal offences, the Court shall forward to the Government of India Defence Department (Army Branch), a copy of the judgment in the case

In this rule the expression 'other ranks' includes warrant officers, non-commissioned officers and men [P.Dis No. 187 of 1940 and P.Dis No. 641 of 1940.]

FRIVOLOUS AND VEXATIOUS ACCUSATIONS.

106. At the conclusion of the trial, if the Magistrate means to take action under section 250 of the Code of Criminal Procedure, he shall call upon the complainant if he be present, to show cause why he should not be ordered to pay compensation under the section. If the complainant be not present, the Magistrate shall issue notice to him to appear on the day fixed for delivery of judgment to show cause why payment of compensation should not be ordered.

If the complainant cannot be served with notice in a reasonable time or appears to be keeping out of the way, or, having been served with notice, fails to appear on the appointed day, the Magistrate may proceed *ex parte*, and make an order under section 250 if he deems fit to do so.

PRELIMINARY ENQUIRIES.

(a) Arrangements for commitment.

107. (1) Committing Magistrates should give preference to preliminary enquiries over other work and should hold such enquiries from day to day in so far as this is practicable.

(11) In every case in which the time taken between the date of receipt of the charge sheet and the date of the committal order exceeds six weeks, the committing magistrate should furnish an explanation for the delay, which should be attached to the copy of the committal order sent to the District Magistrate. [P. Dis No. 60 of 1941.]

107-A When a Magistrate has decided to commit a case to the Court of Session he shall communicate with the Sessions Judge reporting the nature of the offence and the number of witnesses on each side. The Sessions Judge will then fix and intimate to the committing Magistrate with the least possible delay a date for which the witness and the accused shall be summoned or bound over. This arrangement will obviate any unnecessary detention of witnesses and expenditure on bail such as would result if the case were committed and the witnesses bound over to appear on the first day of the Sessions as a matter of course. [P. Dis No. 60 of 1941.]

108. When a Magistrate commits a case to the High Court Sessions, he should communicate with the Commissioner of Police, Madras immediately in order that the latter may designate a responsible officer to be in charge of the case.

109. All Magistrates (including Presidency Magistrates) who commit cases to the High Court Sessions shall bind over the accused and his sureties when on bail, and all the witnesses to report themselves on the first day of the sessions, to the Clerk of the Crown who will give them directions from time to time, as to when they should attend the Court.

(b) Medical witnesses in murder cases

110 In all cases of murder, the Committing Magistrate should bind over the medical witness, if any, to attend at the Court of Session at the trial unless grave inconvenience will be caused thereby. The Committing Magistrate should exercise a careful discretion in this matter having regard on the one hand to the nature of the case and the character of the evidence expected to be given, and on the other hand to the public inconvenience which might be caused by the absence of the medical officer from his station. The latter will depend largely on the length of time that the witness is likely to be kept away from his station and the means available for carrying on his duties during his absence.

111 The fact of the medical witness being bound over, and if he is not bound over, the special circumstances necessitating a departure from the above rule, shall be noted in the preliminary register,

112. The Magistrate shall take particular care to arrange with the Sessions Judge to fix a date for the attendance of the medical witness. It will be the duty of the Sessions Judge to arrange that the absence of the medical Officer from his ordinary duties is as brief as possible.

113. If the Magistrate has failed to bind over a medical witness, it will be open to a Sessions Judge to direct his attendance if he considers it necessary.

114 Supervising Magistrates shall, on perusal of the preliminary registers, watch over and guide Subordinate Magistrates in the exercise of their discretion as to binding over medical witnesses.

(c) Classification of witnesses.

115. In sending up the lists of witnesses in cases committed to Courts of Session, Magistrates shall note how each witness has been classed by him under the rules for the payment of the expenses of witnesses.

(d) *List of Property.*

116. When any person is committed for trial before the Court of Session a descriptive list of any weapons, or other articles of property connected with the case shall form part of the record.

(e) *Report on the means of the accused.*

117. To enable the High Court or Court of Session to arrive at a decision as regards the second condition in Rule 157, the Committing Magistrate shall in such cases make enquiries and report in the Preliminary Register whether the accused means to appoint a pleader, and if not, whether he is, in the opinion of the Magistrate, possessed of sufficient means to do so. Each case must be decided on its merits, and no hard and fast rule as to insufficiency of means shall be applied.

118. If the Committing Magistrate is of opinion that the accused is possessed of sufficient means to secure professional assistance for himself at the trial, the Magistrate shall inform him at the time of commitment that the employment of a pleader to defend him at the trial rests with himself and shall record in the Preliminary Register that the accused has been so informed.

CHAPTER V.

PRESIDENCY MAGISTRATES AND BENCHES OF MAGISTRATES.

1.—PRESIDENCY MAGISTRATES.

119. The office hours are from 11 a.m. to 5 p.m. The summons office will open not later than 10-30 a.m. The Magistrates will ordinarily commence their sitting not later than 11 a.m. and unless the work of the day is disposed of earlier shall not rise except for a brief interval for luncheon before 5 p.m. If circumstances, such as pressure of work, so require the Court may extend the sittings for such period as it may deem necessary. The Chief Presidency Magistrate for the Egmore Court and such Presidency Magistrate, as the Chief Presidency Magistrate shall from time to time decide, for the George town Court shall make suitable arrangements for the despatch of emergent business or the disposal of any arrears which may have accumulated owing to public holidays.

120. The deposition of each witness, recorded by a Presidency Magistrate, shall bear at the head the name and age of the witness and at the foot the date or dates of his examination.

121. Copies of records will be granted to persons authorized to receive them upon payment of the copying and examining charges, which will be levied in the form of three anna copy stamp papers at the rate of one paper for every 175 words or fraction thereof, except in cases where, under the law, such copies should be furnished free of cost. The payment of these charges does not affect the payment of fees under the Court-Fees Act, or the exemptions from such payment, when the copies are exhibited in Court. No suitor or pleader will be allowed to make copies of record either personally or by agent.

(i) Translations made by the Court Interpreters will be charged for at annas 8 per 90 words or fraction thereof.

Translation fee.
Two annas stamp on copy application.

(ii) Applications for copies of records must bear a Court-fee stamp, value two annas.

122. Every Presidency Magistrate shall submit such forms, records, reports, returns and reports and returns as may be called for by the Chief Presidency Magistrate.

122—A. The Chief Presidency Magistrate shall inspect at least once a year, the courts of the other Presidency Magistrates and submit a copy of the inspection report to the High Court [P. Dis. 200 of 1941].

123. (i) The Chief Presidency Magistrate may, of his own motion, or on the application of any Presidency Magistrate, refer any case or classes of cases, trial by a Presidency Magistrate, for trial by a bench of two or more Magistrates and may, by his order, appoint the time and place at which such bench shall sit.

(ii) In regard to the recording of evidence and the judgment, the proceedings shall be conducted in a manner similar to proceedings before a single Magistrate and subject to the provisions of Act V of 1898.

124. For the purpose of sections 144 (4), 193 and 528 (2) of the Code of Criminal Procedure, 1908, the other Presidency Magistrates are subordinate to the Chief Presidency Magistrate.

125. Presidency Magistrate in the City of Madras are authorized to exercise the powers conferred on a "Magistrate" by the Fugitive Offenders Act, 1881 (44 and 45 Vict., Ch. 69).

126. The Chief Presidency Magistrate shall be the Magistrate to whom immediate information is to be given of accidents happening on the railways within the town of Madras as required by section 83 of the Indian Railways Act, 1890.

The Presidency Magistrate will also exercise all magisterial functions connected with the Railway Police, such as granting remands, etc.

127. The Medical Officer in charge of the Penitentiary at Madras shall be the medical officer by whom persons accused before a Presidency Magistrate of offences and appearing to such Magistrate to be of unsound mind and incapable of making their defence are to be examined; and the Mental Hospital at Madras shall be the place in which persons so accused and found to be of unsound mind and incapable of making their defence are to be kept in safe custody under section 466, Code of Criminal Procedure if the offences of which they are accused are non-bailable, or if sufficient bail is not given.

2.—BENCHES OF MAGISTRATES.

Tenure of Honorary Magistrates. **128.** The term of office of Honorary Magistrates shall be two years. [P. Dis. No. 463 of 1939.]

129; Two or more Special Magistrates appointed for any area may sit as a bench, together with any salaried Magistrate whom the District Magistrate shall from time to time nominate for that purpose. The salaried Magistrate shall be Chairman of the Bench so constituted and the Bench is hereby invested with the powers of a Magistrate of the third class or such higher powers as are exercisable under the provisions of sub-section (2) of section 15 or in virtue of orders made by Government under sub-section (1) of section 15 of the Code of Criminal Procedure, 1898;

(1) to try summarily offences under the Indian Penal Code, sections 277, Summary trial of 278, 279, 285, 286, 289, 290, 323, 334, 336, 341 offences. 352 426, 427, 447, and 504,

(2) to try summarily offences under Municipal Acts and the conservancy clauses of Police Acts, punishable only with fine or with imprisonment for a term not exceeding one month,

Abetments. (3) to try summarily abetments of any of the foregoing offences;

Attempts. (4) to try summarily attempts to commit any of the foregoing offences, when such attempts are offences

(5) to try, in accordance with Chapter XX of the Code of Criminal Procedure, 1898, offences punishable under Trial as summons case.

(a) Rule 13 of the rules framed by the Local Government for making vaccination compulsory and for enforcing in under sections 137 and 199 of the Madras Local Boards Act, 1920,

(b) section 18 of the Madras Registration of Births and Deaths Act, 1899,

(c) section 5 of the Madras Town Nuisance Act, 1889 (Madras Act III of 1889) and sections 8, 9 and 12 of the Madras Gaming Act 1930 (Madras Act III of 1930);

(d) the Madras Hackney Carriage Act, 1911,

(e) the Madras Public Health Act, 1939 (Madras Act III of 1939) except those under Section 143 [G O. No. 1610 dated 4-4 1940]

Provided that nothing in Sub rule (1) shall be deemed to empower any bench other than one exercising first-class powers to try any offence under section 427 and provided also that no bench shall notwithstanding anything in Rule 134 try offences under section 427 and 447 except with the special sanction of Government

Provided also that, with the approval of the District Magistrate, any three or more Special Magistrates, of whom one is specially designated by the District Magistrate, may sit together as a bench and shall exercise the powers of a Magistrate of the third class or such higher powers as are exercisable under the provisions of sub-section (2) of section 15 of the Code of Criminal Procedure, 1898, in respect of the offences specified above other than those referred to in the first proviso

Provided that where a bench consisting of one or more Special Magistrates and a salaried second class Magistrate is invested with the power of a Magistrate of the first class, the salaried Magistrate alone shall be Chairman of that bench.

The Magistrate specially designated by the District Magistrate shall, if no salaried Magistrate is present, be Chairman of such bench.

Notes.—Minimum number of three magistrates should be present throughout. 1983 M. W. N. 93, Cr. 5.

130 All existing rules made by District Magistrates for the guidance of benches in their several districts as to the time and places of sitting shall continue in force until modified or withdrawn

Provided that no Court shall, on any day, be held before 7-30 a. m.

131. Differences of opinion shall be settled by the votes of the majority Opinion of majority to of the Magistrates present the Chairman having the prevail. casting vote.

132. If any person charged with any of the offences specified above is arrested without warrant and has not been released on bail, he shall be produced before the salaried Magistrate having jurisdiction unless concurrent jurisdiction has been given to a Magistrate specially designated under the second proviso to Rule 129 in which case he shall be produced before him. If such Magistrate decides to release the person accused on bail or if such person has already been released on bail or if process to compel his appearance is issued the bailbond or the process shall require him to appear in accordance with its terms before the bench of Magistrates having jurisdiction. If the accused person is not released on bail, the salaried Magistrate shall proceed to the trial of the complaint, but if the accused person is produced before a Magistrate specially designated as aforesaid such Magistrate shall commit the accused person to custody and report the case for orders of the Sub-divisional Magistrate. The District Magistrate or the Subdivisional Magistrate shall exercise the same powers in regard to withdrawal or reference of cases from benches as he possesses in the case of Magistrates under section 528 of the Code of Criminal Procedure.

133. Under section 265 of the Code of Criminal Procedure, every bench of Magistrates is authorized to prepare the record or judgment of the bench by means of any officer appointed by the Subdivisional Magistrate.

134. Under section 260 of the said Code every bench of Magistrates exercising first class powers is hereby invested with power to try summarily any or all of the offences specified in that section, and every bench of Magistrates exercising power of the second class is hereby empowered to try summarily all or any of the offences specified in clauses (1) and (2) of Rule 129 *supra*.

CHAPTER VI.—COURTS OF SESSION.

135. The seal of every Court of Session shall be a circular seal two inches in diameter, bearing the royal Arms and the following inscription in English and in the principal vernacular language of the District—

“The Court of Session of the———Division”.

When new seals are required, Court of Session shall indent for them on the Public Works Workshop, sending their indents through the Registrar of the High Court.

136. Cases committed to the Courts of Session shall be filed and numbered on the dates of orders of committal to the Sessions Courts. The cases shall continue to bear the same numbers even when they are transferred for trial to the Assistant or Additional Sessions Judge.

SITTINGS OF COURTS OF SESSION.

137. Ordinarily Courts of Session shall begin their sittings on the first Monday in each month provided that if such day be a gazetted holiday, the sessions shall commence on the next Court day.

138. As a rule, Courts of Session shall sit not later than 11 a. m. each day and, unless the work of the day is disposed of earlier, shall not rise, except for luncheon, before 5 p. m. In exceptional circumstances the sittings of Courts of Session may commence as early as 10 or 10-30 a. m. and continue until such hour as may be necessary to conclude any trial on that day proceeding before the Court. In winter months the usual hours of the Court may be from 10-30 a. m. till 4-30 p. m., if the judge so desires.

139. In addition to the regular monthly sessions, special sessions shall be held before the annual vacation.

140. A special sessions shall also be held each year within a week after the annual vacation, and the date on which this special sessions is to begin shall be fixed by the Sessions Judge and notified in the District Gazette before the vacation begins.

141. The Sessions Judge will give due notice from time to time in the District Gazette of the date on which the next sitting of the Court of Session will commence. Person summoned to serve as jurors and assessors shall be required to be in attendance as from the commencement of the sessions.

142. Sessions Judges should send to the District Superintendents of Police of their divisions before the commencement of each of their Sessions a list of cases posted for trial at the Session in the following form.—

Number of Sessions case.	By which Magistrate committed	Number of the P. R. case	Offence	Number of prisoners.	Date fixed for hearing.	Remarks.

N. B.—Where a case is made over to an Additional or Assistant Sessions Judge, the fact should be indicated in the column for "Remarks".

JURISDICTION DURING VACATION

143. Section 17, clause (4) of the Code of Criminal Procedure does not authorize Sessions Judge to make a general order, extending over the period of their recess, empowering District Magistrate to dispose of urgent Criminal applications. Absence from headquarters during the recess cannot be held to be "unavoidable absence", nor to render a Sessions Judge incapable of acting within the meaning of that section.

144. A Sessions Judge shall decline to hear any applications made to him during the recess if he is absent from his division and shall refer the applicants to the High Court.

145. Sessions work should usually be given preference over civil work and should never be unnecessarily interrupted; but every Sessions Judge should arrange, as he finds most convenient for the disposal of urgent Civil or Criminal work.

146. Any practice in variation of the above rules which may appear to be necessary owing to circumstances of a special or local character, shall be reported for the orders of the High Court.

JURY LIST.

147. Great care shall be exercised in the preparation and revision of the lists of Jurors and special attention shall be paid to the inclusion in the lists of all qualified Europeans, Americans, respectable and educated members of well-to-do classes and a large number of merchants and teachers residing in towns.

148. The following persons are exempted from serving as jurors or assessors in Courts other than the High Court under section 320 (1). Criminal Procedure Code —

(a) The Agent, the Chief Accountant and the Cash keeper of every branch of the Imperial Bank of India

(b) All officers and subordinates of the Public Works Department while actually in charge of Public Works Ranges

(c) All members of the Executive Establishments of the Public Works Department

(d) The managers of offices of Superintending Engineer, Public Works Department, and the Head Clerks and Accountants, of Divisional offices

(e) All Railway Engineer in charge of sections of Railways open for public traffic.

(f) Officers of the South Indian Railway —The Agent the Chief Engineer, the Deputy Chief Engineer the Locomotive and Carriage Superintendent, the Chief and Deputy Commercial Superintendents the Chief and Deputy Transportation Superintendents, District Traffic Superintendents, Permanent Way Inspectors, Locomotive Foremen, Stationmasters, Engine Drivers, Telegraph Inspectors, Telegraph Signallers, Guards, Bridge Engineer, Architect, Signal and Interlocking Engineer, Assistant Signal and Interlocking Engineer, Assistant Engineers, District Signal Inspectors, Electrical Inspectors, Traffic Inspectors, Head Lamp Examiner, Chief Controller, Assistant Controller, Deputy Loco and Carriage Superintendent, Electrical Superintendent, Assistant Electrical Superintendent, the Chief Medical Officer and District Medical Officer (at Trichinopoly).

(g) Officers of the Madras and Southern Mahratta Railway —The Chief Engineer, the officers of the Traffic Locomotive and Engineering Departments in charge of Districts and their Assistants, permanent Way Inspectors employed on the line, Locomotive Foremen, and Drivers all Stationmasters and Assistant Stationmasters, Telegraph Inspectors Telegraph Signallers and Guards

(h) Managers of the offices of Engineers-in-Chief and Head Clerks and Accountants of Divisional offices, State Railways

(i) All Treasury Deputy Collectors, Huzur Sheristadars, and Huzur Cash-keepers-

(j) District Educational Officers, Inspectors and Deputy Inspectors of Schools

(k) Supervisors of Elementary Schools

(l) The Assistant or Deputy Director of the Survey Department.

(m) All Superintendents of Jails and their sub-ordinates.

(n) All Stamp-vendors.

(o) All Registration Officers.

(p) Post Officers.

(q) Managers and Accountants of the District Police Officers.

(r) All persons who live at a distance further than 20 miles by road from the place where trials before the Sessions Court are held.

(s) The officers and staff of the Meteorological Department: [P. Dis No. 131 of 44.]

(1) Provided that where means of communication by rail, motor bus, or water are available, the distance which they may be called upon to travel may be proportionately increased—2 miles by water or 3 miles by motor bus, or 5 miles by rail being taken as equivalent to one mile by road.

(2) Provided also that the Government may by special order exclude from the above exemption the residents of any place in the event of such a course being necessary in the interests of the administration of public justice.

149. [*Deleted by P. Dis. No. 726 of 1932.*]

TRIAL BY JURY.

150. All Courts of Session in the Madras Presidency, except those in the Agencies Vizagapatam and Godavari, shall try the following offences under the Indian Penal Code, and all cases of attempts to commit and abettments of those offences by a jury consisting of five persons —

Theft:—Sections 379, 380 and 382

Robbery:—Sections 392, 393, 394, 395, 397, 398, 399, 400, 401 and 402.

Receiving and concealing stolen Property:—Sections 411, 412 and 414.

House trespass —Sections 451, 452, 453, 454, 455, 456, 457, 458 and 459

Dishonestly breaking open any closed receptacle containing property.—Section 461,

Direction for trial by jury from special jury list.

151. The offences now triable by jury shall, if the presiding Judge so directs, be tried by jurors summoned from a Special Jury list.

RULES FOR CHOOSING JURORS.

152. The name of each person summoned to act as a juror or assessor under section 326 of the Code of Criminal Procedure shall be written on a slip of paper, and the slips of paper bearing the names of persons so summoned shall be placed in a box or bag and shaken together. The proper ministerial officer of the Court shall then draw out the slips of paper, one by one, from the said box or bag until the requisite number of Jurors or Assessors has been obtained.

153. When an European or Indian British subject claims to be tried by a mixed jury under section 275 (1), Cr. P. Code. a mixed jury under section 275 (1) of the Code of Criminal Procedure, the slips of paper containing the names of such of the persons summoned under section 326 of the Code as are Europeans or Americans, in the case of an European British subject, and as are Indians, in the case of an Indian British subject, shall first be placed in a box or bag and the number of persons which will constitute a bare majority of the jury shall be chosen from amongst these persons by drawing the slips of paper in the manner prescribed in Rule 152. When this bare majority shall have been chosen, the slips of paper containing the names of all the persons summoned except those already selected shall be shaken up together and thereafter such further number of persons shall be chosen in the manner prescribed in Rule 152 as with those already selected will make up the whole number of jurors required.

154. The provisions of Rule 153 shall apply *mutatis mutandis* in cases where the privilege secured by section 275 (2) of the Code of Criminal Procedure is claimed by an European (other than an European British subject) or American. In such cases a bare majority of the jury shall first be chosen from amongst such of the persons summoned under section 326 as are Europeans or Americans and thereafter the number of persons necessary to make up the whole number of jurors required shall be selected from amongst all those summoned whose names have not already been drawn.

SUMMONING OF PERSONS EXCLUDED FROM THE JURY LIST TO SERVE AS JURORS

155 In exercising their discretion under section 260 of the Code of Criminal Procedure to summon persons as jurors to try European British subjects or Europeans or Indians, Europeans and Americans persons persons exempted for service as jurors under section 370 of the Code Sessions Judges should always have due regard to the interests of the public service.

JOINT CHARGES

156 Though powers are given by the Code of Criminal Procedure to try certain charges not to the charge of a single offence at the same time it is tried jointly. It is inconvenient to try persons charged with murder and theft at the same trial. In such cases the Court may with express sanction of discretion in holding separate trial and it will get procedure authorized in section 240 of the Code of Criminal Procedure.

Note. Where accused is charged with murder and with recovery of stolen property it is desirable as laid down in the rule to try the murder first and then for the minor charge later if necessary 193, M. W. N. 65 Cr. L. J. Murder and robbery A.I.R. 1927 M. 243

PLEADER FOR THE DEFENCE IN MURDER CASE

157 In any new case brought to High Court or a Court of Sessions when a pleader is engaged in a criminal case, the Court may engage a pleader to defend an accused person if (1) the charge against him is such that a capital sentence is possible and (2) it appears that he has not engaged a pleader and is not provided sufficient means to do so.

158 Pleaders appointed under the above rule shall be furnished with Pleaders to be given the necessary papers and allowed sufficient time to prepare for the defence.

159 The High Court or the Court of Sessions shall not be bound by the report of the Committing Magistrate but shall use its own discretion as to the appointment of pleader for the defence if the accused has not retained one. If there are several accused persons and their respective defences are such that it appears to be undesirable to entrust the defence of all to a single pleader as many pleaders may be appointed for the defence as the necessity of the case seems to require.

160 All Sessions Judges are authorized to sanction the payment to each pleader engaged to the defence under Rule 159 of a fee not exceeding Rs. 25 for each day of the trial or [R. O. C. 3517/39 B. 1].

160 A The Court may of its own motion or on an application by the Public Prosecutor appoint a pleader as amicus curiae in any case of importance or difficulty [P. Dis No. 807 of 1941.]

ADJOURNMENTS

161. When a case is adjourned from one session to another there should be a written order of adjournment and remand.

162 The latter may conveniently be made by the Sessions Judge endorsing his signature on the warrant of commitment under which the prisoner is brought up the words—"Remanded until—"

EXAMINATION OF THE ACCUSED.

163. In a trial before a Court of Session, the record of the examination of the accused person before the Committing Magistrate which section 287 of the Code of Criminal Procedure requires to be given in evidence, should be read as part of the case for the prosecution and marked as an exhibit before the case for the defence is entered upon. A note to the effect that this has been done should be entered on the record.

OPINIONS OF ASSESSORS.

164. In cases tried with the aid of assessors, when a Sessions Judge differs from the assessors or any of them, it is desirable to have a record not merely of the opinion of each assessor as required by section 309, Code of Criminal Procedure, but also, as far as possible, of the grounds on which the opinion is based. Such a record will be of use to the Court of Appeal and to Government in dealing with petitions for mercy.

165. Sessions Judges shall therefore in recording the opinions of assessors under section 309 of the Code of Criminal Procedure, in all cases in which they differ from the assessors or any of them, and in other cases in which it seems to them desirable to do so, record also as concisely and clearly as possible the grounds on which each assessor bases his opinion.

166. Such grounds should be elicited by putting specific and pointed questions to the assessors on the important and salient points on which the decision of the case really depends and inviting their opinions thereon.

The record of the opinions of the assessors should be appended to the Judgment.

Note.—The Rule does not enable the Judge to ask assessor abruptly for reasons for his decision S. 303 of Cr. P. Code and this rule do not intend such practice. 1931 M. W. N. 1139; Cr. 235.

NO "FINDING OF THE JUDGE" NECESSARY IN CASES TRIED BY JURY

167. In cases tried exclusively by jury where the jurors are not also acting as assessors, it is unnecessary to record any finding of the Judge, and no such finding should be recorded.

RELEASE ON ACQUITTAL

168. A prisoner is entitled to be discharged from custody immediately on a judgment of acquittal being pronounced upon him by the Court of Session, when there is no other charge pending against him and his further detention is illegal. It is for the jail authorities in whose custody a prisoner remains until the trial is concluded to satisfy themselves of the result of the trial and no formal warrant of release addressed by the Court to the Superintendent of the Jail is necessary.

REASONS FOR SENTENCE.

169. In every Sessions trial in which a sentence of exceptional severity or unusual leniency is passed or in which varying degrees of punishment are awarded to different persons convicted of the same offence in one trial, the reason which guided the Judge in the determination of the amount of punishment shall be recorded and shall be printed either as part of or as an appendix to, the judgment or the charge to the jury, as the case may be.

SENTENCE OF DEATH.

170. A prisoner sentenced to death is entitled to obtain a copy of the

Copy of letter of reference
in referred trials

Judge's letter of reference

171. (a) Sessions

Order of High Court in
referred trials to be com-
municated to Superinten-
dent of Jail in 24 hours

of the Order in the Court

Judges are directed to make arrangements for communicating every order of the High Court imposing, confirming, reversing or commuting a sentence of death to the Superintendent of the Jail where the prisoner is confined within 24 hours of the receipt of the Order in the Court of Session

(b) In the case of an order of the High Court confirming or imposing a sentence of death, Sessions Judges shall further immediately on receipt of the judgment of the High Court issue a warrant in form No. XXV of Schedule V of the Criminal Procedure Code, 1893, (suitably amended with regard to cases in which a sentence of death is imposed by the High Court,) accompanied by a copy of that judgment and shall appoint therein as the date of execution a day not less than 21 days nor more than 28 days from the date of such receipt

SENTENCE OF TRANSPORTATION

172. When a Court of Session imposes a fine in addition to transportation

Levy of fine to be notified
to Jail in form to be sent by Court
of Session in cases of sen-
tence of transportation and
fine

and the whole or part of the fine is paid or recovered, the Court shall endorse the fact of such payment or recovery on the warrant of commitment, or, if that has already been issued, shall notify the fact of the payment or recovery to the jail authorities concerned

172-A. Courts of Session

Recommendation to the
Government for action
under section 10 A of the
Borstal Schools Act, 1925

provisions of section 10-A
of the Madras Borstal Schools Act 1925. [P. Dis No.
294 of 1943.]

sentencing an offender who is not less than 16 and not more than 21 years of age to transportation for life shall consider whether a recommendation should be made to the Provincial Government that the offender be detained in a Borstal School under the provisions of section 10-A of the Madras Borstal Schools Act 1925. [P. Dis No. 294 of 1943.]

RULES FOR PRINTING SESSIONS JUDGMENTS.

173. For the purpose of printing Sessions Judgments, Sessions Judges

Sessions judgments may
be printed at private
presses.

will be permitted to employ private presses as may be most convenient. The printing at private presses will, however, be subject to budget provision and to the condition that the rate does not exceed 4 annas per

175 words.

Provided, however, that for the duration of the present war, the rate mentioned in the preceding sentence shall not exceed five annas per 175 words. [R. O. C. No. 2522/43 B-1]

174. Every Court of Session shall print all its Session judgments

Court of Session to print
all its judgments.

A list of witnesses examined by the prosecution or by the defence or by the Court and of exhibits and material objects shall be printed at the end of all Sessions judgments.

175. Statements of previous convictions should be printed with judgments

Tabular form not to be
used in printing statement
of previous conviction

except in cases of acquittal but not in tabular form. If in rare cases the Sessions Judge considers it desirable to adopt a tabular form, the form should be

made in manuscript and not printed.

176- In the headings of printed judgments and charges to jury, it should invariably be noted whether the accused, or any of them, was defended by a pleader, and in cases tried with assessors it should also be noted by what caste the assessors are generally styled.

The name of the police station concerned and the crime number of the offence should also be noted at the head of the judgment or charge [P. Dis. No. 124 of 1944.]

177. - (1) Courts of Session shall, within eight days from the date of pronouncing judgment, distribute copies of all their judgments as follows, a sufficient number of copies being printed for the purpose of each case—

(i) one copy for the District Divisional and Committing Magistrates.

NOTE.—After perusal by the District and Divisional Magistrates, the copy may be sent to the Committing Magistrate for filing with the record

(ii) one copy for the use of the Superintendent of Police his subordinates and the Assistant Public Prosecutor, if any

(iii) one copy to the High Court, as provided for in the rules relating to the submission of judgments and calendars,

(iv) eight copies to the High Court as provided for in the rules relating to the submission of records,

(v) one copy for each accused person with reference to Section 371 Criminal Procedure Code,

(vi) one copy (for each prisoner) to the Superintendent of the jail to which a prisoner is committed when such prisoner is sentenced to imprisonment for being filed with the warrant of committal or used for purposes of memorialising Government, if required

(vii) two copies (for each prisoner) to the Superintendent of jail to which a prisoner is committed in cases when such prisoner is sentenced to death to prevent delay in the transmission to Government of petitions for mercy;

(viii) in cases other than those mentioned in sub-heads (vi) and (vii) one copy shall be furnished to each person convicted of an offence on his requisition, in order to afford facilities for memorialising Government to exercise its powers under Chapter XXIX of the Code in addition to the copy required by Section 371,

(ix) one copy to the Chemical Examiner in cases in which reference has been made to him,

(x) one copy to the head of the department or immediate superior in cases in which the official character or conduct of a Government servant is impugned

(xi) one copy to the Local Public Prosecutor,

(xii) one copy to be filed with the record;

(xiii) one copy to be bound up in a volume of judgments for reference in Sessions Court,

(xiv) one copy to the Professor of Medical Jurisprudence, Medical College, Madras, in cases in which his evidence has been taken

The copies referred to in sub-heads (i) to (xi) inclusive shall be supplied free of charge.

Where printed copies can be spared, a copy may be supplied to a person not entitled by any law or order to receive a copy free of cost, on payment of a fee of 2 annas for every 175 words or fraction of 175 words contained in it. All such payments shall be in cash.

Note.—The copies prescribed in sub-heads (ix) and (xi) shall be furnished after return of records by the High Court after disposal of appeal, if any.

[P. Dis. No. 15 of 1343.] Provided, however, that for the duration of the present war the fee for a spare copy mentioned in the last preceding paragraph shall be two annas six pies per 175 words or fraction of 175 words contained in it. [R. O. C. No 2522/43-B-1]

(2) Courts of Session shall send with a least practicable delay advance typewritten copies of their judgments in all cases under Section 202 Indian Penal Code in which sentence of death has not been passed, to District Magistrate and District Superintendent of Police without waiting for the printed copies to be made ready [G. O. Ms 272 Home dated 20th January 1941]

178 All payments for printed copies of sessions judgments all from Proceeds of sale of time to time, be remitted to the near Treasury to the credit of Stationery and Printing."

CHAPTER VII.

HIGH COURT

179 Give as otherwise provided, no application or petition for the exercise by the High Court of its judicial authority will be entertained when forwarded by post

180. All petitions, applications and revise memoranda of appeal or revision on a petition and all proceedings presented to the High Court shall be written, typewritten or printed, fairly and legibly on substantial white foolscap folio paper with an outer margin about two inches wide and an inner margin about an inch wide and separate sheets shall be stitched together bookwise. The writing or printing may be on both sides of the paper and numbers shall be expressed in figures

181. Every original miscellaneous petition shall be headed with a cause-title of miscellaneous title setting out the provision of law under which it is filed and the names and full addresses of the parties to it separately numbered and described as Petitioners and Respondents.

182. Every memorandum of criminal appeal, other than an appeal preferred, the name of the Court, the names of the appellants and respondents in the High Court and also the full cause-title of the case or matter in the lower Court or Courts as the case may be.

Where an applicant is in jail, that fact shall be mentioned in the cause-title with an indication of the jail in which he is confined.

Those provisions apply, as far as may be to revision petitions also.

183 Every proceeding subsequent to an appeal, revision petition or other application may be headed with a short cause-title setting out the provision of law and the names of the parties and their ranks and status in the main case.

184. (1) Every petition of appeal or revision petition shall be accompanied by a certified copy of the judgment or order of the Court appealed against or sought to be revised, a memorandum of appearance duly signed, and the necessary vouchers for the verification of any matter or entry in the petition or enclosures.

(2) When a revision petition is presented against a judgment or order passed in appeal, it must be accompanied also by a certified copy of the judgment or order of the Court of first instance, obtained either by a fresh application for copy or by a return of enclosures under rule 252.

(3) When the certified copy of the judgment or order of the lower court is in manuscript, the appeal or revision petition shall be accompanied by a type-written copy of the judgment or order [*P. Dis. No. 168 of 1942*].

185 (1) Where an appeal, on the date of its first presentation, is barred by limitation, or where a revision petition is presented more than 90 days from the date of judgment or order which the petitioner seeks to have revised, a petition to excuse delay, supported by an affidavit explaining the circumstances of such delay, shall be filed along with the petition or appeal.

(2) The period of 90 days referred to above is exclusive of the time occupied in obtaining a certified copy of the order or judgment which the petitioner seeks to have revised, but inclusive of the time occupied in obtaining return of documents under rule 252.

186 Every interlocutory application relating to an appeal, revision petition or original petition shall be made by a separate petition in each case.

187 Every petition filed in Court or presented in the office shall be stamped with the Court-fee to which it is liable under the law.

188 Every petition or other application which does not comply with the above requirements or is otherwise defective shall be returned to the party or pleader concerned for amendment and representation within a specified time.

189 Every petition of appeal represented after the expiry of the time allowed by the preceding rule and barred by limitation on the date of its representation shall be accompanied by a petition and affidavit such as is prescribed in rule 185 *supra*.

190 Every appeal not governed by the provisions of the preceding rule and every other petition or application for which no period of limitation is prescribed by law, shall, if represented after the time allowed, contain an endorsement of explanation for delay provided that in the case revision petitions the period of 90 days allowed by rule 185 is not exceeded. Where the period of 90 days is exceeded, a petition to excuse delay supported by an affidavit shall be filed among with the revision petition as provided by rule 185.

191 Every appeal (other than one preferred from jail or in which the prisoner has been sentenced to death or has been called upon to show cause why he should not be so sentenced) and every application or petition other than a revision petition shall be posted for admission at the earliest possible opportunity after it is filed.

192. Every revision petition shall be posted for admission as soon as possible after it is filed without the printing of either pleadings or evidence unless the party has presented with the petition an application specifically asking for printing before admission and has also at the same time produced copies of the papers which he desires to get printed.

193 Every petition or application intended to come up for orders of the High Court as a special motion should be filed in the office of the Registrar not later than 3 p.m., on the day previous to the day on which the motion is to be heard and a separate letter, explaining the nature of the urgency, should be addressed to the Registrar for permission to move.

194. Every petition allowed by the Registrar under this rule will be taken up before the regular work of the Court for the day before the day's regular work. and shall also have precedence over civil motions.

Additional set of papers to be filed in motions before a Bench of two or more Judges.

195 Where a motion has to be heard by a Bench of two or more Judges, additional sets of papers should be furnished by the party concerned

196 No application for transfer in which previous notice is prescribed by the Code of Criminal Procedure shall be accepted as a special motion unless it bears endorsement or is accompanied by a satisfactory voucher that notice was given to the Public Prosecutor or the Crown Prosecutor in the case may be, at least 24 hours before the forenoon of the day on which the Court sits to take up the application.

197. Notices in criminal cases shall be served on parties personally unless they are represented by a pleader in which absence of pleader case notice shall be given to the pleader

Provided that when on admitting a criminal appeal or revision petition presented by a pleader, the Court directs notice to issue to a party to show cause against enhancement of sentence notice shall be served on the appellant or petitioner in person

Public Prosecutor when instructed to oppose Appeal or Revision Petition may be instructed to apply for enhancement of sentence

198 In any case where a District Magistrate instructs the Public Prosecutor to oppose a criminal appeal or a Criminal Revision Petition in the High Court, he may instruct him also to apply for enhancement of the sentence

Notice to Public Prosecutor in cases referred to High Court under section 374, Cr. P. Code.

199 In cases referred to the High Court for the confirmation of capital sentences, the Court will issue notice to the Public Prosecutor to appear in all cases on behalf of the prosecution.

Provisions of Rule 240 to apply to notices issued by High Court.

200 The provisions of Rule 240 shall apply also to notices issued by the High Court Appellate Side

201 Notice for service on parties in Jail will be forwarded to the officer in charge of the jail and endorsements by the officer through jail authorities. that notices were duly served shall be taken as proper service.

Cases in which Court printing is done.

202. (a) The following classes of cases will be printed by the Court without special orders of Court.

- (1) Reference under section 374, Criminal Procedure Code
- (2) Reference under section 307, Criminal Procedure Code.
- (3) Appeals under section 419 Criminal Procedure Code, unless otherwise directed. [P. Dis No. 889 of 1940]
- (4) Appeals under section 417, Criminal Procedure Code, on capital charges.
- (5) Cases taken up for enhancement of sentence to death.

202. (b) (1) It will not be necessary ordinarily to print inquest report and prior statements or depositions which are filed merely to prove omissions or motive:

(2) Where parts of a document are relied on these parts only need be printed, the Sessions judge or the lower court indicating them in the judgment or the list of Exhibits annexed. [*P. Dis No. 808 of 1941.*]

203 Records of cases not governed by the preceding rule shall ordinarily be printed at the cost of the party applying for such printing in the absence of an express direction of Court to have them printed at the cost of Government.

Other cases to be printed at party's cost

ment

204 No party will be permitted to print the evidence in a case without his having paid for the printing of the pleadings.

Evidence to be printed only if pleadings are printed

205 No application for the printing of evidence presented by the petitioner after the expiry of one week from the date of the admission of his petition, or by the respondent after the expiry of fourteen days from the date of the service of the notice of the petition shall be received except under the orders of the Registrar.

206 When application is made for the translation and printing of any document not on the record of the case with a view to its admission in evidence, the translation and printing may be ordered by the Registrar, provided that the order shall be made without prejudice to the posting of the case.

Registrar to permit printing of fresh documents to be admitted in evidence

207. A party to whom a bill is issued for printing charges whether in respect of pleading, or of evidence shall be called upon to pay the amount therein specified within ten days from the date of its service on him and no payment shall be received after the expiry of that period except under an order of the Registrar.

Bill to be paid within ten days from its issue

208. In the absence of an express direction to the contrary, no printing either of pleadings or of evidence shall be done in a revision case, pending disposal of which stay of proceedings in any criminal case has been ordered by the Court.

No printing in revision cases wherein there is an order of stay.

Cases in which printed papers are to be supplied gratis.

209. Printed papers will be supplied free of cost in the following cases

(i) One set to the Public Prosecutor in every case in which notice has been issued to him

(ii) One set to a practitioner to whom a crown brief has been issued.

(iii) One set to a practitioner who has been appointed to act as *amicus curiae*,

(iv) One set to pleader for accused in.

(a) Reference under section 374, Criminal Procedure Code.

(b) Appeals against acquittal.

(c) Revisions for enhancement of sentence to death.

210 A pleader requiring free supply of printed or typed papers in any other case should obtain the orders of Court by means of a petition or otherwise.

Application to be made in other cases.

Application for free copies of printed papers should be made at the time of the admission of an appeal or petition and should be supported, wherever possible, by an affidavit on the means of the accused. [*G. O. Ms. No. 4521, Home dated 11th November 1940.*]

211. Applications for additional sets of printed papers will not be entered unless they are made by parties paying for the printing and are made in sufficient time to enable the office to comply with the requisition.

212. A Police officer requiring a set of printed record in a case in which notice is given to the District Superintendent of Police for sets of printed papers, should apply through the latter to have a set forwarded to him by post or delivered to him in the office of the Registrar.

213. Printed papers will not be issued to parties or pleaders not having notice in a case except on payment and under the special orders of the Registrar.

214. A list of cases ready for hearing will be exhibited on the notice board as each case becomes ready and no criminal case will ordinarily be posted for hearing within a week of its being so exhibited.

215. No such list will however be exhibited for original miscellaneous applications.

216. A rough list of cases for disposal on the next working day will be exhibited on the notice board each day.

217. In addition to the list carried on the preceding rule a special list of cases shall be put up on the Tuesday preceding the week during which they will be disposed of by the Criminal Bench, when applications for adjournment of any case on such list will be dealt with.

218. The following classes of cases will ordinarily be heard by a Bench of two Judges.

(1) Every reference under section 374 Criminal Procedure Code, and every appeal from the judgment of a Criminal Court in which sentence of death or transportation of life has been passed on the appellant or on a person tried with him. [P. Dis No. 872 of 1941.]

(2) Every reference under section 307 of the Code of Criminal Procedure.

(3) Every appeal against acquittal on a capital charge.

(4) Every case taken up in revision for enhancement of sentence to death.

(5) Every application for directions of the nature of a *habeas corpus* under section 491, Criminal Procedure Code.

(6) Every other case marked at the time of admission for a Bench of two judges.

218-A. All appeals under Section 411-A of the Criminal Procedure Code shall be heard by a Bench of two judges, who shall be judges other than the judge by whom the original trial was held. [R. O. C. No. 1695/44 B-1 dated 17th August 1944.]

Single Judge Cases.

219. All criminal cases not referred to in Rule 218 will ordinarily be heard by a single judge.

Reference under section 374, Criminal Procedure Code, to be given precedence.

220. References under section 374, Criminal Procedure Code, will have precedence over other cases posted before the Criminal Bench.

Judgment and orders to be despatched with promptness.

221. The Judgment or Order of the High Court in, or relating to a criminal case on its file shall be certified to the lower Courts with the least possible delay.

Orders on reference under section 374, Cr. P. Code, to be communicated on the same day.

222. An order on a reference under section 374, Criminal Procedure Code, shall be certified to the Court of Session on the same day on which Judgment is pronounced.

223. Where, in any of the following cases, the Judgment of the High

Order to be issued before-hand if preparation of judgment is delayed.

Court cannot be certified to the lower Court on the day on which it is pronounced, an order drawn up in conformity with the Judgment will be certified on the day on which Judgment is delivered —

(i) Every case in which a judgment of acquittal or release is passed or upheld and the accused or any of them is in custody ;

(ii) Every case in which a sentence is passed, enhanced, or confirmed and the accused or any of them is on bail or otherwise at large,

(iii) Every case in which a sentence on an accused person who is entitled to early or immediate release upon such order is reduced or altered,

(iv) Every other case which, by its nature requires urgent or immediate action.

Judgments relating to Sessions trials

224. Judgments in cases relating to trials by a Court of Session shall be communicated to—

(1) The Sessions Judge

(2) The Additional or Assistant Sessions Judge, if any,

(3) The District Magistrate of the District

(4) The Superintendent of Jails, if any in which the accused are confined

(5) The Inspector General of Police

(6) The Public Prosecutor, Madras

N.B.—An additional copy will be forwarded to the Sessions Judge in every case in which an accused person is in jail for communication to him.

225. Orders issued in advance of judgments shall be communicated

To whom orders are to be communicated,

to the officer and parties to whom judgments are communicated

225-A. In cases where the High Court grants a certificate under Section 205 of the Government of India Act, 1935, to a person under sentence of death the date of the issue of the certificate shall forthwith be intimated to the Government and the Superintendent of the jail in which the prisoner is confined [P Dis. No 32/44].

Orders to be communicated to Subordinate Magistrates through the District Magistrate.

226. Every order and judgment relating to a magisterial enquiry or trial shall be communicated to the Magistrate or Magistrates concerned through the District Magistrate in the absence of special urgency.

227. Rules 220 and 225 will apply *mutatis mutandis* to Revision cases arising from cases other than Session trials

227-A. Notwithstanding anything contained in the following rules, a copy of the order of the High Court dismissing an application for bail pending the disposal of a Criminal Revision case or an appeal or other proceedings in the High Court shall be sent only to the prisoner, through the Superintendent of the Jail, in which he is confined and no other person, provided that where bail is applied for on behalf of more than one prisoner and bail is granted to one or more prisoners Rules 224, 226 and 227 supra will apply [P Dis. No. 879 of 1941]

228. A pleader will be engaged at the cost of the state to defend an accused person who does not engage a pleader himself and who is under sentence of death or has been called upon to show cause why a sentence of death should not be passed upon

him or against whom an appeal has been filed under section 417, Criminal Procedure Code in cases involving imprisonment, and may, if necessary, be engaged in a case involving a lesser sentence.

229. No pleader will be engaged to argue a case *ex officio curiae* unless the Court directs or the Public Prosecutor applies for the appointment of a pleader as *amicus curiae* in any particular case.

230. The fee payable to a pleader appointed by the High Court shall be fixed by the High Court in its discretion.

231. On the termination in the High Court of a Reference appeal, revision case or other application or matter the records of the case with the material objects any shall be returned to the Court or Courts from which they were received along with the judgment or order of the High Court.

232. Copies of judgments, orders, or other papers filed by parties in the High Court as enclosures to any appeal, revision petition or other application shall on the termination of such appeal, revision petition or application, be returned to them on a requisition made by them in that behalf, under the orders of the Registrar.

233. In every case in which a sentence of death is passed or confirmed by the High Court, two copies of the judgment of the High Court with two sets of printed evidence and of all other material papers shall be forwarded to the Government in the Home Department, [P. Dis.

No. 409 of 1941]

Criminal Rules of Practice to apply to High Court.

234. These rules and orders shall govern the practice of the High Court on the Appellate Side to extent to which they are applicable.

CHAPTER VIII. APPEALS.

235. Head clerks of the offices of the Sub-Divisional Magistrates are empowered to receive criminal appeals during the absence of Sub-Divisional Magistrates from headquarters. The criminal appeals so received shall at once be forwarded to the Sub-Divisional Magistrates in camp. Such appeals are to be received by the Head clerks of the office only and by no other member of the establishment.

Treasury Deputy Collectors are empowered to receive criminal appeals and other applications addressed to District Magistrates during the absence of the latter from headquarters. The criminal appeals so received shall at once be forwarded to the District Magistrates in camp.

NOTES:—An appeal presented in time to the second clerk of S. D. Magistrate Court in the absence of Head Clerk as proper presentation. 1939 M. W. N. 819 GF. 43.

236. Where several accused persons are convicted in a single trial, each of them can prefer an appeal against his conviction of either separately or jointly with one or more of the other accused. But when one accused has been convicted at different trials, he should prefer a separate appeal in each case.

JAIL APPEALS

237. No appeal forwarded from jail under section 420 of the Code of Criminal Procedure shall be summarily rejected until seven days have elapsed after its receipt by the Appellate Court. In forwarding such an appeal the officer in charge of the jail

Jail appeals.

shall invariably certify that the appellant has been informed that, if he intends to appoint a pleader an appearance must be put in within seven days from the date on which his petition may reach the Appellate Court: Provided that nothing in this order shall oblige the Appellate Court to wait for the full period of seven days, if the appellant has appeared and been heard in person or by pleader within that period

NOTICE OF APPEAL

238 When a Court of Appeal decides to proceed under section 421 Code of Criminal Procedure, in disposing of an appeal received under section 420 from an appellant who is in jail, it is not legally bound to give notice to the appellant, nor is it generally necessary to do so. It is sufficient as a rule if the Court allows seven days to elapse before proceeding to dispose of the appeal under section 421.

239. When the Court means to proceed under section 422, the law requires that notice shall be issued to the appellant and the intimation given by the officer of the jail when forwarding the appeal petition, is not sufficient for this purpose.

240 The following officers are the officers to whom notices of appeal shall be given under section 422, Code of Criminal Procedure —

(1) District Magistrates in appeals other than appeals to Court of Session,

(2) The Public Prosecutor in appeals to Court of Session;

(3) The Prosecuting Inspector of Police in mufassal districts other than the Nilgiris in appeals against convictions in cognizable cases in the Appellate Courts in those districts other than the Court of Session;

(4) The Agent and Manager of the Madras and Southern Mahratta Railway and the Agent of the South Indian Railway in appeals against convictions for Railway offences in connexion with those Railways respectively;

(5) The District Forest Officer in appeals against convictions for forest offences except in cases of offences relating to unreserved lands. In such cases notice shall be given to the Revenue Divisional Officer who ordered the prosecution,

(6) Officers of the Salt and Excise Department in charge of circles in appeals against convictions for Salt and Excise offences in their circles, and in appeals to the High Court in Abkari cases, to the Inspector of Excise, Madras Town Circle;

(7) The Crown Prosecutor for the Town of Madras in appeals to the High Court from the judgments or orders of the Presidency Magistrates and the Public Prosecutor in other appeals to the High Court

In the latter case copies of notice and grounds of appeal shall also be sent by post to the Superintendent of Police of the district concerned in time to enable him to prepare his instructions. The said officer shall acknowledge their receipt immediately, but the hearing of the appeal will not be delayed for want of such acknowledgment.

(8) The Inspector of Excise, Madras Town Circle, in appeals preferred to the High Court in cases under the Indian Opium Act, 1878, and the Dangerous Drugs Act (II of 1930).

*Every notice issued under this rule shall be accompanied by a copy of the grounds of appeal on plain paper.

APPEALS AGAINST ACQUITTAL.

240-A. Full opportunity should be given to the accused person against whose acquittal an appeal has been filed, to attend, if he so desire, either personally or by a representative, when the appeal is being heard. To this end if the accused is in custody arrangements should be made if he should so desire for him to be brought before the Appellate Court. If he is not in custody, application for the grant of financial assistance, if desired, should be made by the accused person to the District Magistrate of the district, through the Court which tried and acquitted him; and the scale of allowance and bounty to be sanctioned to him should be that ordinarily allowed to third-class witnesses attending Criminal Courts. [*P Dis. No. 164 of 1943.*]

240 B. (1) Subordinate Courts shall give notice of every application for bail under section 427 of the Code of Criminal Procedure, 1898, to the Local Public Prosecutor.

(2) In cases where bail is granted the Court granting bail shall report the fact to the High Court at once. [*P Dis. No. 125 of 1943.*]

SUSPENSION OF SENTENCE

241. Whenever an Appellate Court orders the suspension of the execution of a sentence of imprisonment under section 426 of the Code of Criminal Procedure, it shall send a copy of the order to the Superintendent of Jail in which the appellant is confined.

242. The effect of an order by an Appellate Court suspending the execution of a sentence of imprisonment pending disposal of an appeal, is that the appellant, if detained in jail, is to be treated, in all respects, as an under-trial prisoner.

243. Whenever an Appellate Court dismisses an appeal it shall, whether the execution of the sentence is suspended under section 426 of the Code of Criminal Procedure, or not, send a copy of the order dismissing the appeal to the Superintendent or officer in charge of the jail in which the appellant is, or is to be, confined.

244. Whenever an Appellate Court modifies a sentence of imprisonment, it shall prepare a fresh warrant in accordance with the terms of the order passed and shall send the same along with a copy of the order direct to the Superintendent or officer in charge of the jail in which the appellant is, or is to be, confined, and shall recall and cancel the original warrant of commitment, which shall be attached to the record of the original Court and returned to it therewith.

245. Whenever an Appellate Court reverses a sentence of imprisonment, it shall prepare a warrant of release and shall send the same along with a copy of the order direct to the officer in charge of the jail in which the appellant is confined. It shall at the same time recall and cancel the original warrant of commitment which shall be attached to the record of the original Court and returned to it therewith.

246. Whenever an Appellate Court reduces or reverses a sentence of fine, it shall, if the fine has been levied, grant to the appellant an order of refund. When the order of refund is presented to the Court of First Instance, it shall forthwith prepare the

necessary payment order, and deliver it to the payee without requiring any formal application therefor.

247. Rules Nos. 241, 243 to 246 do not apply to the High Court. The Order of High Court on procedure applicable to the High Court in appeals and revision cases is provided in sections 425 and 442 of the Code of Criminal Procedure. Whenever the High Court certifies its judgment or order to a lower Court under either of these sections, it is the duty of the latter Court to issue the necessary warrant of release or modification of sentence, or order for the refund of a fine, and in doing so it shall be by the provisions of rules 241, 243 to 246.

Note.—In this rule the expression “lower Court” means, in the case of a judgment or order passed by the High Court on a revision petition against the finding, sentence or order of an appellate Court and not the court of First Instance [H.O.P. Dis. No. 324 of 1942]

248. Such payment order shall be presented for payment within Time for presentation three months from the date of its issue. If not presented within that period, it shall be returned to the Court, and may then, after being re-dated and initialled by the Magistrate, be re-issued to the payee.

249. When an order of the High Court in appeal or revision is certified Duplicate copy of order to a lower Court under section 425 or 442 of the Code of Criminal Procedure, it shall be issued in duplicate to Superintendent of Jail. and the lower Court shall, on receipt of the order forthwith send one copy of it to the Superintendent or officer in charge of the jail in which the prisoner is confined, along with the warrant, if any, required by rule 247. If the High Court's order is an order of release, one copy shall be sent direct from the High Court to the Superintendent or officer in charge of the jail.

Note.—In this rule, the expression “lower Court” means, in the case of a judgment or order passed by the High Court on a revision petition against the finding, sentence or order of an appellate Court and not the court of First Instance. [H.O.P. Dis. No. 324 of 1942]

250. The Court disposing of an appeal by a convict in jail shall, in communicating its order to the prisoner, return to him through the jail authorities the copy of the judgment appealed against which accompanied the petition of appeal when such copy is in manuscript.

251. In the cases referred to in rules 241, 243 to 245, 247 and 249, as many warrants shall be prepared as there are prisoners, and communicated to the Superintendent or officer in charge of the Jail in which the prisoners are confined, and shall be accompanied or followed as soon after as possible by the same number of copies of the judgment or order in accordance with which the warrants are prepared.

252. On the termination of an appeal, revision petition or other application, the Criminal Court to which such appeal, revision petition, or application is made, shall, on an application in writing made in that behalf by the party or pleader concerned, return, as soon as possible, copies of judgments, order and other papers filed as enclosures to such appeals, revision petitions or applications.

An endorsement on the application for return, signed by the party or pleader, shall be a sufficient voucher for the return of the copies.

TESTING SUFFICIENCY OF BAIL OR SECURITY

253. When a Court of Appeal or Revision orders the release on bail Court to test sufficiency of a person who has been convicted or committed for of bail. trial, the question of the sufficiency of the bail shall, unless the Court of Appeal or Revision thinks fit itself to determine the

the sufficiency of the bail or security, be determined by such Court or Magistrate subordinate to it as the Court making the order may direct.

254. The Court authorized to test the sufficiency of the bail or security

shall when satisfied as to the sufficiency of the security, forward to the officer in charge of the jail in which the accused is confined, a warrant for the release of the prisoner in pursuance of the order and shall further in cases where bail is ordered by a superior Court report to that Court whether or not the bail has been furnished

255. When an order to give security is made under section 106 or sec-

tion 118 of the Code of Criminal Procedure the question of the sufficiency of the security shall be determined by the Court or Magistrate by whom the order was made provided that when an order to give security is made under section 106 of the Code of Criminal Procedure by an Appellate Court or by the High Court when exercising its powers of revision the question of the sufficiency of the security shall unless the said Court thinks fit itself to determine the sufficiency of the security be determined by such other Court or Magistrate subordinate to it as it may direct.

CHAPTER IX REFERENCE AND REVISION

256. It will be the duty of the Sessions Judges carefully to peruse the

judgments and orders of the Sub-Divisional and First-class Magistrates submitted to them and to report to the High Court without delay any case which, in their opinion, calls for revision, or any doubtful case. They will not themselves issue proceedings criticising those of the Magistracy except on appeal.

257. District Magistrates shall comply with all requisitions for records,

returns and information made by the Sessions Judges with regard to any case referable by them to the High Court. They shall also render any explanation which Sessions Judges may require from them or from Subordinate Magistrates in such cases.

258. In every case in which a Sessions Judge submits to the High Court

for revision *suo moto*, the proceedings of any Criminal Court in any matter affecting the public revenue, a copy of the reference should be submitted simultaneously to the Board of Revenue for information

REFERENCE TO GOVERNMENT TO REMIT OR COMMUTE A SENTENCE UNDER SECTION 401, CRIMINAL PROCEDURE CODE

259. Whenever a Sessions Judge or Magistrate shall be of opinion that

there are grounds for recommending the Government to exercise the powers vested in them by section 401 of the Code of Criminal Procedure of remitting or commuting any sentence adjudged by the Criminal Courts, the recommendation for remission or commutation of the punishment shall be submitted to the Government through the High Court.

Every such reference shall be accompanied by a certified copy of the record of the trial or of such record thereof as exists

260. In all cases where women are convicted for the murder of their infant

children, a reference should be made, through the High Court, to the Government with an expression by the Sessions Judge of his opinion as to the propriety or otherwise of reducing the sentence.

Every such reference shall be accompanied by a certified copy of the record of the trial or of such record thereof as exists.

NOTES.—If case falls under this rule for reduction of sentence death sentence is not appropriate. 1939 M. W. N 1180 Cr 171.

261. In cases in which the opinion of a Sessions Judge is called for by the Government under section 401 of the Code, the Sessions Judge's reply should be forwarded through the High Court, whether the requisition for the opinion has been received through the High Court or not.

Report of Sessions Judge on references under section 401 to be submitted to Government through High Court.

REFERENCE BY DISTRICT MAGISTRATES AND SESSIONS JUDGES.

262. District Magistrates shall refer direct to the High Court, without delay, any case which has been reported to them under rule 257 for revision or which, in their opinion, calls for revision.

District Magistrates to refer cases calling for revision to High Court.

253. When a District Magistrate is of opinion that an order of acquittal is wrong, and that such order should be set aside, he should request Government to prefer an appeal under section 417 of the Code of Criminal Procedure and should not report the case for the orders of the High Court under section 438 of the Code.

District Magistrate not to refer to High Court judgments of acquittal.

NOTES:—Rule cannot be read as saying that District Magistrate shall never refer an acquittal to the High Court I. L. R. (1938) Mad. 675—1938 M. W. N. 209. Cr. 25 (F. B.)

264. The Criminal Procedure Code does not confer on District Magistrate any power to refer *Suo Motu* to the High Court any proceedings of a Court of Session. If a District Magistrate considers that such proceedings should be brought to the notice of the High Court, he should move the Public Prosecutor through the Government. [P. Dis. No. 409 of 1941.]

District Magistrates not to refer proceedings of a Court of Session.

In the absence of special urgency, no reference should be made from the proceedings of a subordinate Magistrate in cases where an appeal is provided by law until the time allowed for appeal has elapsed. Where an appellate order or judgment is in existence, the reference should be on that order and not on the order of the Court of First Instance.

265. In making a reference under section 435 of the Code of Criminal Procedure, Sessions Judges and District Magistrates should not enter into a lengthy discussion upon the points of the case, but should merely submit with a covering letter a concise report giving the result of their examination of the record.

Form of reference to the High Court

266. In every case in which a Sessions Judge makes a reference to the High Court under section 438 of the Code of Criminal Procedure, he shall, if required to do so by the District Magistrate, furnish that officer with a copy of the reference.

Sessions Judge to give copy of letter of reference to District Magistrate, if required.

267. In cases referred for the orders of the High Court by Sessions Judges and District Magistrates, it is incumbent upon the Court to see that all material papers are legible, where the originals are illegible.

Legible copies to be forwarded.

268. Reference to the High Court for revision should be by separate letter in each case.

269. In each case the reference must contain the explanation of the Magistrate concerning the alleged error referred or set forth the reasons why such explanation is not sent. The explanation should be obtained through or by the District Magistrate in all cases.

Separate letter of reference.

Explanation of the erring Magistrate.

270. If, in a case sent up for revision, the accused have been sentenced to imprisonment and whipping, it should be stated whether the whipping has been carried out or not.

Material part of record to be sent up.

271. In all cases, the material part of the record of the connected case or cases if any, should be sent up.

Certified copies of judgments or orders to be filed in all revision cases.

272. In all revision cases, certified copies of the judgments or orders sought to be revised should invariably be furnished.

CHAPTER X. EXECUTION OF SENTENCES AND DISPOSAL OF PROPERTY. WARRANT OF COMMITMENT

Committal warrants in English.
Court.

273. All warrants of commitment shall be written in English and sealed with the seal of the Court.

274. When two or more persons are convicted and sentenced to imprisonment at the same time, a separate warrant of commitment shall be issued for each one of them.

275. Where the Provincial Government or the Governor General, suspends, remits or commutes a sentence under Section 401, 402 or 403 of the Code of Criminal Procedure no fresh or revised Warrant need be issued. (*Substituted by P. Dis. No. 409 of 1941.*)

276. Whenever the High Court, in a case submitted to it by a Sessions Judge under section 307 Criminal Procedure Code, convicts the accused and passes sentence on him and issues a warrant of commitment to the jail through the Sessions Judge, it is the duty of the Sessions Judge, to fill in the particulars as to diet, classification and other matters shown on the warrant before it is sent to the jail.

277. Whenever possible a Court which convicts an accused person should decide whether he is to be classified as an "habitual" or "casual" convict, and make a note of the decision on the warrant of commitment for the information of the jail authorities.

The following persons are liable to be classified as "habitual criminals", namely:—

(i) any person convicted of an offence punishable under Chapters XII, XVII and XVIII of the Indian Penal Code, whose previous conviction or convictions, taken in conjunction with the facts of the present case, show that he is by habit a robber, house-breaker, dacoit, thief, or receiver of stolen property, or that he habitually commits extortion, cheating, counterfeiting coin, currency notes or stamps, or forgery;

(ii) any person convicted of an offence punishable under Chapter XVI of the Indian Penal Code, whose previous conviction or convictions, taken in conjunction with the facts of the present case, show that he habitually commits offences against the person;

(iii) any person committed to or detained in prison under section 123 (read with section 109 or section 110) of the Code of Criminal Procedure;

(iv) any person convicted of any of the offences specified in (i) above when it appears from the facts of the case, even although no previous conviction has been proved, that he is by habit a member of a gang of dacoits, or of thieves or a dealer in slaves or in stolen property;

(v) any member of a criminal tribe, subject to the discretion of the Provincial Government concerned; [P. Dis. No. 409 of 1941.]

(vi) any person convicted of an offence and sentenced to imprisonment under the corresponding sections of the Indian Penal Code and the Code of Criminal Procedure as applied by order under the Indian (Foreign Jurisdiction) Order in Council, 1902, or by the authority of any Prince or State in India;

(vii) any person convicted by a Court or tribunal acting outside India under the general or special authority of His Majesty of an offence which would have rendered him liable to be classified as habitual criminal if he had been convicted in a Court established in British India.

Explanation—For the purpose of this definition the word "conviction" shall include an order made under section 111, read with section 110, of the Criminal Procedure Code

(1) The classification of a convicted person as a habitual criminal should ordinarily be made by the convicting Court but if the convicting Court omits to do so, such classification may be made by the District Magistrate or in the absence of an order by the convicting Court or District Magistrate and pending the result of a reference to the District Magistrate, by the officer in charge of the jail where such convicted person is confined:

Provided that any person classed as a habitual criminal may apply for a revision of the order

(2) The convicting Court or the District Magistrate may for reasons to be recorded in writing, direct that any convicted person or any person committed to or detained in prison under section 123 read with section 109 or section 110 of the Code of Criminal Procedure, shall not be classed as a habitual criminal and may revise such direction.

(3) Convicting Courts or District Magistrates as the case may be, may revise their own classifications and the District Magistrate may alter any classification of a prisoner made by a convicting Court or any other authority, provided that the alteration is made on the basis of facts which were not before such Court or authority

Note—The expression District Magistrate wherever it occurs in paragraphs (1) (2) and (3) above means the District Magistrate of the district in which the criminal was convicted, committed or detained. The expression includes a Presidency Magistrate

(4) Every habitual criminal shall as far as possible, be confined in a special jail in which no prisoner other than habitual criminals shall be kept

Provided that the Inspector General of Prisons may transfer to this special jail any prisoner, not being a habitual criminal whom, for reasons to be recorded in writing, he believes to be of so vicious or depraved a character and to exercise, or to be likely to exercise so evil an influence on his fellow prisoners that he ought not to be confined with other non-habitual prisoners, but a prisoner so transferred shall not otherwise be subject to the special rules affecting habitual criminals (Rules 216 and 217, Prison and Reformatory Manual Volume II) [P. Dis No 409 of 1941]

278. When an accused person is sentenced to imprisonment as well as

Levy of fine to be or in default of payment of, a fine, the warrant issued endorsed on the warrant or to the jail authorities shall contain definite information as to whether the fine has been paid, or not, in whole or in part. If the warrant does not furnish this information a reference shall be made by the jail authorities to the committing Court to ascertain whether the fine has been paid and the purport of the reply shall be noted on the warrant

279. When the fine is paid or recovered in whole or in part after the

Subsequent levy of fine admission of the prisoner into jail the responsibility to be notified to the jail for intimating to the jail authorities the fact of the authorities. payment rests entirely with the Court. Such intimation shall invariably be acknowledged by the jail authorities and the acknowledgment shall be filed by the Court for future reference. On receipt of the intimation from the Court, the jail authorities shall endorse the information on the warrant.

280. Intimations sent by a Criminal Court to the Superintendent of a jail that a fine which the prisoner has been ordered to bear its seal. to pay has been paid or recovered in whole or in part shall bear the seal of the Court

281. In calculating sentences of imprisonment, the day upon which the sentence is passed and the day of release ought both to be included and considered as days of imprisonment, for example, a man sentenced on the 1st January to one month's imprisonment should be released on the 31st January, not on the 1st February.

COMPENSATION UNDER SECTION 545, CODE OF CRIMINAL PROCEDURE

282. The Court by which a fine or any portion of a fine has been awarded
 Payment of amount of compensation under section 545 of the Code of
 compensation. Criminal Procedure shall certify the appropriate of the
 person to whom such compensation has been awarded and the order for pay-
 ment of the amount awarded direct to the Treasury to which such amount has
 been remitted together with a certificate to the effect that the (1) the sentence
 and award are not subject to appeal or have been confirmed by the Appellate
 Court and that no order has been made from the Court of Revision modifying
 or reversing the order of compensation or (2) where the order of compensation
 has been modified in appeal or revision that the payment order is conformity
 with such modification or (3) that the application has expired and that no appeal
 has been preferred and that no order has been received from the Court of
 Revision modifying or reversing the order of compensation.

Note—If the fine is imposed in a case which is subject to appeal the order for pay-
 ment shall not be granted till after the expiry of one month of the period specified in
 section 545 (2), Code of Criminal Procedure.

283. In cases in which the Court awarding compensation may be un-
 (certifies as to appeal) able to certify whether an appeal has actually been
 preferred the party desirous of obtaining payment of
 the amount of compensation in full may apply to the Appellate Court to
 certify whether or not an appeal has been preferred and on such application
 being made the Appellate Court shall grant the required certificate.

284. Compensation awarded under sections 530 and 553 of the Code of
 Compensation otherwise Criminal Procedure and compensation and all other
 than under section 545 sums recoverable like fine under any other provision
 Criminal Procedure Code of law and not creditable to 'Law and Justice,'
 should be dealt with in the manner provided in the foregoing rules for compen-
 sation awarded under section 545, provided that if the order to pay such com-
 pensation or other sum is reversed or modified in appeal or revision, the payment
 order on the treasury shall be given to the party or parties entitled to draw the
 money.

285. When a military pensioner is convicted and sentenced to imprison-
 Intimation to be given to Pension Paymaster on conviction of military pensioners
 ment or where such conviction and sentence or imprison-
 sonment are confirmed in appeal the Court passing or
 confirming such a sentence shall forward to the
 Deputy Controller of Military Accounts (Pensions)
 Lalore free of charge a copy of such judgment as
 soon as possible after it is pronounced, stating the place from where the pensioner
 last drew his pension [P. Dis. No. 712 of 1909].

Magistrates, other than District Magistrates, shall forward such judg-
 ments through the District Magistrate.

Assistant and Additional Sessions Judges shall forward such judgments
 through the Session Judge.

Presidency Magistrates other than the Chief Presidency Magistrate shall
 forward such judgments through the Chief Presidency Magistrate.

The rule applies also to judgments of the High Court exercising powers of
 appeal or revision or disposing of references under section 307 Criminal Proce-
 dure Code.

SENTENCE OF WHIPPING

286. (1) Judicial floggings shall be inflicted in private either at a jail or
 Mode of inflicting whipping. in an enclosure near the Court house, and if possible,
 in the presence of a medical officer.

(2) The punishment shall be inflicted on the buttocks, and care should be taken that the person undergoing the punishment is tied up to a triangle or that his immobility under the punishment is otherwise secured in order to preclude the possibility of the rattan falling on any other part of the body

(3) The practice shall invariably be adopted of spreading over the prisoner's buttocks during the operation a thin cloth soaked in an antiseptic, which may be either a solution of perchloride of mercury of the strength of 1 in 2,000 (two thousand) or a carbolic lotion of the strength of 1 in 40 (forty)

(4) The cane employed shall not be less than $\frac{1}{2}$ inch in diameter in the case of person of or over 16 years of age and in the case of juvenile offenders a still lighter cane shall be employed.

Note.—The Central Government in calling the attention of the Provincial Government to the infliction of whipping as a judicial punishment have stated that they regard it as desirable in the case of juvenile offenders that the stripes inflicted should not exceed fifteen [P. Dis. 409 of 1941]

Magistrate to record whipping inflicted before him.

287 When a sentence of whipping is carried into effect in the presence of the Magistrate who passed it, it is the duty of the said Magistrate to record the fact

NOTIFICATION OF RESIDENCE BY RELEASED CONVICTS.

288, (1) When an order has been passed under section 565 of the Code of Criminal Procedure 1898, that a convict shall be released, the convict shall notify his residence and any change of residence after release for a specified term the Court or Magistrate passing such order shall enter a record thereof in the warrant of commitment issued under section 383 of the Code in respect of such convict

(2) A convict in respect of whom such an order has been passed shall, when called upon by the officer in charge of the jail in which he is confined state before his release the place at which he intends to reside after his release naming the village or town and the street therein.

(3) After release and on arrival at his residence he shall within 24 hours notify at the nearest Police station that he has taken up his residence accordingly.

(4) Whenever he intends to change his residence he shall, not less than two days before making such change, notify his intention at the nearest Police station, giving the date on which he intends to change his residence and the name of the village or the town and street in which he intends to reside, and on the arrival at such residence, he shall, within 24 hours, notify at the nearest Police station that he has taken up his residence accordingly.

(5) The officer recording a notification under either rule (2) or rule (4) shall appoint such period as may be reasonably necessary to enable the convict to take up his residence in the place notified. If the convict does not take up his residence in such place within the period so appointed he shall not later than the day following the expiry of such period, notify his actual place of residence to the officer in charge of the Police station within the limits of which he is residing.

(6) Whenever a released convict intends to be absent from his residence between sunset and sunrise, he shall notify his intention at the nearest Police station, stating the time and purpose of such absence and the exact address where he can be found during that period.

(7) Every notice required to be given by the foregoing rules shall be given

Notice to be given of by the released convict in person unless prevented from doing so by illness or other sufficient cause, in which case, the notice required shall be sent either by letter duly signed by him or by an authorized messenger on his behalf

(8) Whenever the released convict gives any notice required by the fore-

Officer to certify receipt going rules, he will be furnished with a certificate of notice. to the effect that he has given such notice by the officer to whom he gives it

(9) A copy of the order specified in rule (1) shall be served on the convict

Copy of order and rules before his release from jail. A copy of those rules in to be served on convict. English and the vernacular shall at the same time be given him, and the substance thereof fully explained to him in a language he understands. He shall also be informed of what period he is bound to observe these rules, and that any neglect or failure to comply with them will render him liable to punishment as if he had committed an offence under section 176 of the Indian Penal Code

(10) If a convict in respect of whom an order has been passed under

Police to call upon section 565 of the Code of Criminal Procedure shall convict and serve notice. have been released from jail without a copy of the said order having been served upon him, and the other formalities specified in these rules having been complied with, he may at any time while the order remains in force, be called upon by the Police to report himself on a given day at a Police station near the place where he is found, and on his reporting himself the copy of the order shall be served on him and the other formalities prescribed in rules (2) and (4) shall be complied with.

Note—In applying the above rules to the case of a wandering man who has no "residence" in the sense of a fixed place of abode, they may be reasonably interpreted as meaning that he resides at the place where he sleeps, even if he remains there only one night. On his release he may, therefore be asked under Rule (2) where he is going to stay and he may be told that if he moves about the country he must always notify the place of his temporary abode to the police

DISPOSAL OF PROPERTY.

289. The counterfeit coins have to be disposed of by a Criminal Court

Counterfeit coins to be under sections 517, 523 or 524, Code of Criminal sent to the mint at Cal- Procedure, they shall be forwarded together with any cutts with a report. dies, moulds etc., which may have been produced in this case, to the nearest treasury or sub-treasury with a request that they may be remitted to the mint for examination. A concise and accurate report should also be sent containing a description of the case and the sentence imposed.

In all appealable cases the transmission of such coins to a Treasury Officer should be deferred till the expiry of the time allowed for preferring an appeal and in the event of appeal, until it is disposed of.

290. In the case of forgery of currency notes, the disposal of implements,

implements, e.g., such as moulds, dies, etc., produced in, and confiscated by, a Court of Law, is a matter for the decision of the Court which tries the case, and when they are ordered by the Court to be delivered to the Police for destruction, the Police shall arrange themselves for their destruction, and not send them to the currency Offices or mints for destruction: provided that if the Police consider any particular implements are of special interest and shall be preserved, they shall make them over to the Criminal Investigation Department for this purpose

All arms and ammunition of prohibited bore which are confiscated should be sent to the nearest arsenal for disposal.

290-A. Rules under section 386 (2), Criminal Procedure Code, for the execution of warrants, for levy of fine and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant

RULES

1 A warrant for the levy of a fine issued under clause (a) of sub-section (1) of section 386 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the Code), shall be directed to a Police officer and shall be in Form No XXXVII of Schedule V to the Code

2 The authority issuing the warrant shall specify a time for the sale of the attached property and for the return of the warrant

2 A The following articles shall not be liable to attachment or sale namely —

The necessary wearing apparel cooking vessels beds and bedding of the offender his wife and children and such personal ornaments as in accordance with custom or religious usage cannot be parted with by a women, for example a thali or wedding ring

3 (1) The attachment of movable property belonging to the offender shall be made by seizure

Provided that, where in addition to or in lieu of seizure the Police officer considers that either or both of the methods referred to in clauses (b) and (c) of sub-section (3) of section 88 of the Code should be adopted he shall obtain an order to that effect from the court issuing the warrant

(2) When the method referred to in clause (b) of sub-section (3) of section 88 of the Code is adopted and a receiver is appointed the powers duties and liabilities of such receiver shall be the same as those of a receiver appointed under Order XL of the First Schedule to the Code of Civil Procedure 1908

3-A The Police officer who makes an attachment of movables under sub-rule 3, may after attachment, hand over the articles attached to a third party on a bond being executed in Form No 15-A of Appendix E to the Code of Civil Procedure 1908, for their custody and production before the Court when required.

4 Before making the attachment, the Police officer shall deliver or tender a copy of the warrant, to the offender or, in his absence to any adult male member of his family If a copy cannot be so delivered or tendered the Police officer shall affix a copy of the warrant at some conspicuous place where the property to be attached is found. After making the attachment the Police officer shall, in like manner, deliver, tender or affix, as the case may be, an inventory of the property attached

6. If no claim is preferred to any property attached, within one month from the date of the attachment, by any person other than the offender, the Police officer executing the warrant shall have power to sell, within the time mentioned in the warrant and without previous reference to the Court issuing the warrant, the property or such portion thereof as may be sufficient to satisfy the amount to be levied

Provided that if the property attached consists of livestock or is subject to speedy and natural decay or if its immediate sale would be for the benefit of the owner, the Police officer may sell it at once but the proceeds of the sale shall not be appropriated towards the fine until the expiration of one month from the date of the attachment and until any claim preferred under rule 6, has been disposed of.

6. If any claim is preferred to any property attached under rule 3 within one month from the date of such attachment, by any person other than the offender, on the ground that the claimant has an interest in such property and that such interest is not liable to attachment, the claim shall be enquired into and disposed of as provided in rules 7 and 9.

Provided that any claim preferred within the period allowed by this rule may, in the event of the death of the claimant, be continued by his legal representative.

7. Claims may be preferred under rule (6) in the Court by which the warrant is issued or if the claim relates to property attached under a warrant endorsed by a District Magistrate or the Chief Presidency Magistrate under section 387 of the Code, in the Court of such Magistrate.

8. Every such claim shall be enquired into and disposed of by the Court in which it is preferred.

Provided that, if preferred in the Court of a District Magistrate or Chief Presidency Magistrate, such Magistrate may make it over to any Magistrate of the first or second class or to any Presidency Magistrate, as the case may be, subordinate to him.

9. The enquiry shall be summary and the Court shall record its decision on the claim with the reasons therefor. Such decision shall be final and shall forthwith be communicated to the Police officer executing the warrant who shall dispose of the property in accordance with such decision.

10. The Police officers executing the warrant shall, as soon as possible after the sale, produce the sale-proceeds before the Court issuing the warrant or if the property was sold under a warrant endorsed by a District Magistrate or the Chief Presidency Magistrate under section 387 of the Code, in the Court of such Magistrate.

11. Subject to the proviso to sub section (1) of section 386 of the Code and subject also to section 70 of the Indian Penal Code, if, at any time subsequent to the return of the warrant, the fine, or any part thereof, remains unpaid, and the Court has reasonable ground for believing that the offender has any movable property, it may issue a fresh warrant for the attachment and sale of such property in accordance with the Code and these rules.

CHAPTER XI. SUPERVISION OF SUBORDINATE CRIMINAL COURTS.

Inspection of Courts by District Magistrates and Sub-Divisional Magistrates.

291. District Magistrates shall inspect every Sub-Divisional Magistrate's Court or First-class Court once a year and other Subordinate Courts occasionally.

District Magistrates shall take measures to ensure that Sub-Divisional Magistrates inspect the Subordinate Courts of their division including Bench Courts and Courts of Honorary Magistrates once a year at least.

NOTE: The expression "First class Court" referred to in the above rule includes courts of Taluk First class Magistrates and exclude First class Bench Courts and Courts of First Class Honorary Magistrates [P. Dis No. 361 of 1933]

291 A. The Bench Courts in the mufassal shall be inspected in the manner prescribed below:—

(1) Stationary Sub Magistrates, Deputy Tahsildars Magistrates, and in Taluks which have neither a Stationary Sub-Magistrate nor a Deputy Tahsildar Magistrate but only a Taluk Magistrate, the Taluk Magistrates, shall inspect the registers relating to property, fines and cash in the third and second class Bench Courts within their respective jurisdictions once a quarter: and. [P. Dis No. 573 of 1940.]

(2) Sub-Divisional Magistrates shall inspect the registers relating to property, fines and cash in the Firstclass Bench Courts within their jurisdiction once a quarter.

2. The reports of inspections should be submitted to the District Magistrates concerned; officers in sub-paragraph (1) above should send the reports through the sub-Divisional Magistrates.

3 The Sub-Divisional Magistrates will however continue to inspect all the Bench Courts in their division once a year, as prescribed in rule 291 of the Criminal Rules of Practice, in addition to the inspections referred to in paragraph 1 above.

292. Some of the points to which the attention of Sessions Judges and District Magistrates is particularly directed in the exercising supervision. exercise of their powers of supervision are noted below —

(a) The rash issue of process.

(b) The dealing with disputed claims of right under colour of a charge of criminal trespass or mischief, and convictions held of the former offence without a finding as to the criminal intent.

(c) The indiscreet imposition of fines, beyond the means of the offenders

(d) The light punishment by inferior Courts of offences requiring severe sentences in cases which ought to have gone up to a superior Court for enhanced punishment.

(e) The imposition of heavy fines in addition to imprisonment with a view in default of payment, to extend the term of imprisonment beyond the ordinary powers of the Magistrate to inflict.

(f) The exaction of excessive bail or excessive security for keeping the peace or for good behaviour.

(g) Unnecessary delay in the trial of cases.

293. Particulars of previous convictions and sentences shall be stated at the end of the judgment (whether original or appeal-convictions when to be late) in all cases where the rules require a judgment stated to be submitted. Where no judgment is required to be submitted, but only a tabular statement (whether monthly or otherwise), particulars of previous convictions and sentences shall be invariably entered in the column of remarks.

This rule does not apply to cases of acquittal.

COURTS OF SESSION.

294. (1) Courts of Session shall transmit to the High Court printed copies of all their judgments in original trials within eight days from the date of pronouncing judgment in each case.

(2) Assistant and Additional Sessions Judges shall submit copies of the judgments in Original Trials through the Sessions Judge.

295 In all sessions calendars submitted to the High Court particulars of previous convictions and sentences should be given be noted in sessions except in cases of acquittal and a note should be made as to whether any or all of those previous convictions have been admitted by or proved against the accused.

296. Whenever more than three months have elapsed between the date of apprehension of the accused and the close of the trial in the Court of Session an explanation as to the cause of such delay (in whatever Court it may have occurred) shall invariably be furnished.

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Tabular statement as grounds in which judgments are to be submitted by District Magistrates they shall in each case forward to the High Court, within the same period as that prescribed for judgments, the tabular statement in the following form omitting any detailed narrative of circumstances and grounds of decision. Provided that District Magistrates may, if they think fit, in any such case, submit the judgment with the statement.

[illegible]

Explanation —

Col 2 —These particulars are required to facilitate identification in case of further convictions

Col 8 —Here should be entered particulars of previous convictions, if any

300 District Magistrates and Additional District Magistrates shall within five days from the close of each month, transmit to the High Court copies of all judgments delivered by them as Courts of Criminal Appeal during the course of that month copies of the judgments of Additional District Magistrates being submitted through the District Magistrate

Particular statement to be given in appeal judgment 301 The judgment shall contain the particular in a tabular statement as in Judicial Form No 126

302 In all cases of appeal the point or points for determination in Contents of judgment appeal and the reasons for the decision of the Appellate Court shall be stated

In case in which an appeal is rejected under section 421 of the Code of Criminal Procedure the judgment shall contain a statement if the fact be so that the Court has perused the petition of appeal and a copy of the judgment or orders appealed against and has heard the appellant his counsel vakil or agent as the case may be, if they appeared or if the fact be so that the appellant was called on the date fixed and did not appear either in person or by counsel vakil or agent

303 Magistrates shall indicate in their calendars below their signatures the extent of the magisterial powers with which they are invested.

304 Except in cases dealt with under sections 204 (3) 243 and 247 of the Criminal Procedure Code and in the case of original trials to be sent to District Magistrate First class Magistrates shall within two days from the passing of the judgment or order or from the termination of the enquiry send, to their District Magistrates copies of—

(a) all judgments in the form prescribed by section 367 of the Code of Criminal Procedure

(b) all orders of dismissal of complaint under section 203 of the Criminal Procedure Code and orders of discharge other than those under section 259 of the Code in respect of which further enquiry can be made or directed under section 436 of the Code

(c) extracts from Registers of Summary Trials;

(d) all proceedings held by them under Chapter VIII, X (except orders made under section 143) and XXXVI of the Code, and

(e) extracts from the Registers of Preliminary Enquiries under Chapter XVIII of the Code

Judgments submitted under this rule excepting judgments in summary trials, shall be accompanied by the information given in the tabular form prescribed above in Rule 73

305 All such Magistrates who are empowered under section 407 of the Code to hear appeals from the sentences of Second & Third-class Magistrates shall within the same period as that prescribed in Rule 304, transmit to the District Magistrate copies of the appellate judgments recorded by them. The rules prescribed above in rules 301, and 302 as to the form and contents of appellate judgments shall apply also to these appellate judgments

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334 (1) offences committed with intent to cause death or grievous bodily harm, 23

(3) offence under section 135(1)(A) IV 1990

(b) offences under the Madras Abkari Act 1914

(7) offence under Madia Act 111 19

(c) cases arising under s 41(d) of M d r 1 at Ill 11889

(9) case and sections and (f) of the 1914 Forest Act 1882 and

(10) offences under the Catholic Ties etc Act

(11) Offences under the Military Transactions (G.O. No. 436, Home dated 18th September 1949)

(12) Cases under the Prevention of Cruelty to Animals Act 1890. [*P. Dis.*
No. 89 of 194 .]

(13) Cases under the Madras Prohibition Act, 1937 (Madras Act X of 1937).
[H. C. P. Dis 581 of 1939.]

all Second and Third class Magistrates shall submit to the District Magistrate through the Sub-Divisional Magistrate a calendar statement of each case tried by them in Judicial Form No. 122 or 123 as the case may be

(1) A judgment, in the form prescribed by the Code of Criminal Procedure, Section 367 or in the event of a case terminating in the discharge of the accused otherwise than under Section 259 of the Code the order of discharge shall accompany the calendar statement [Added by Ms No. 2262 Home dated 13th September 1943] [P. Dis No. 450 of 1943.]

308. Every such calendar statement from a Second and Third-class Magistrate's Court shall be submitted to the Registrar of the Court of Criminal Judicature, together with every extract from the Register of Preliminary Inquiries under Chapter XVIII of the Code from

Second class Magistrates shall be submitted by them to the District Magistrate so as to reach the office of the Sub-Divisional Magistrate within two days from the close of the Proceedings. Sub-Divisional Magistrates will be responsible for their being not unduly delayed in their offices. It is not intended to relieve the Sub-Divisional Magistrates of the supervision they exercise over Second and Third-class Magistrates in their respective divisions.

The Code of Criminal Procedure declares all Magistrates to be subordinate to the Magistrate of the District. He is responsible for the supervision of their magisterial work. But Sub-Divisional Magistrates must supervise the work of the Sub-Magistrates within their respective divisions and report to the Magistrate of the District any instances in which they consider there is error in the proceedings of the Sub-Magistrates.

District Magistrates and Sub Divisional Magistrates should review systematically once in a month the statement of pending cases on the file of the Subordinate Magistrates in the District (Administrative Form No. 33,) If a case shown as pending in a statement is not shown in the next month's statement, it must be verified whether it finds a place in the register of Calendars received (Form No. 17 or 18), or in the monthly statement prescribed in rule 309 of the Criminal Rules of Practice. If any case is not found in the two latter statements the calender with the copy of the Judgment should be called for from the Magistrates concerned, [P. Dis. No. 510 of 1942]

309. (1) All Sub-Divisional Magistrates and Magistrates of the First, Second and Third Classes shall submit to the District Magistrate (through the Sub-Divisional Magistrates in the cases of Magistrates of Second and Third Classes), a monthly statement in the following form in cases dealt with by them under sections 204 (3) 243 247 and 259 of the Code of Criminal Procedure and in the case of offences noted under Rule 307 —

- | | |
|--|---------------------------|
| 1. Calendar Case No. | 8. Date of apprehension |
| 2. Nature of offence (with section of law) | 9. Commencement of trial. |
| 3. Name of accused | 10. Close of trial |
| 4. Case. | 11. Date of judgment |
| 5. Age | 12. Verdict and sentence |
| 6. Date of offence | 13. Explanation of delay |
| 7. Date of filing | 14. Remarks |

(2) The monthly statement shall be submitted not later than the eighth day of the month following that to which the statement relates.

(3) Particulars of cases transferred to other Courts and to the Register of long pending cases should be furnished in column 14

310 When judgments of Appellate Courts which are submitted to the High Court for perusal are expressed in terms which disclose nothing as to the nature of the offences, or evidence relied on to establish them, or the circumstances which aggravate or extenuate the guilt of the offenders, they should be accompanied by copies of the judgments of the Courts of First Instance.

311 When a Sessions Judge sees occasion to comment specially on the action of the Magistracy in connection with a case coming before his Court, he should send in a special report on the subject in the form of a letter without waiting for the despatch of the monthly calendars or appeal statement.

SESSIONS STATEMENT

312. On the termination of each sessions, a statement in Administrative Form No. 35-A should be submitted to the High Court. [P. Dis. No. 104 of 1942]

This statement should include cases, if any, tried by Additional and Assistant Sessions Judges and should show whether a case was tried by the Sessions Judge or Assistant Sessions Judge. [P. Dis. No. 104 of 1942]

PERIODICAL RETURNS.

Instructions for the Preparation of Periodical Returns.

313. A list showing the periodical statements prescribed, the officers by and to whom and the time when, they are to be submitted, is given along with the Administrative Forms.

314 [New.] Sessions Judges should furnish the District Superintendent of Police of their Districts with a quarterly statement in Administrative Form No. 54 of Criminal appeals received by them.

ANNUAL REPORTS

315 The following matters should be noticed and explained in the report to be submitted to the High Court annually on the Administration of Criminal Justice—

(1) Noticeable variations—

(a) in the number of Village Panchayat Magistrate who exercised criminal powers,

(b) in the figures returned in the annual statements Nos. II, Part I, and III

(c) in the influence of local matters on the duration of cases in the Courts or Bench Magistrates, special Magistrate and Third Class Magistrates Subdivisional Magistrate and District Magistrate and Sessions Judges.

(2) Large arrears and high average duration in many of the Courts

(3) Noticeable variations in the percentage of convictions in each class of cases and in the percentage of cases of each description passed during the year such as transportation imprisonment—simple, rigorous or solitary—fine and whipping

(4) High or low percentages of recoveries of fine and of amounts of compensation awarded to accused at the conclusion

(5) Large number of witnesses detained beyond three days in any of these Courts and large or small amounts paid to witnesses for diet and travelling expenses in each class of Courts

(6) Noticeable variations in the number of appeals received disposed of and pending in the Courts of District and Subdivisional Magistrates and Courts of Session and in the average duration of appeals

(7) Also large arrears of appeals and high average duration thereof.

(8) High or low percentages of confirmation on appeals; and any other noticeable point or feature in the crime on the administration of Criminal Justice in the year.

(9) Sessions Judges should also remark on the working on the Jury system.

(10) The length of the report should be curtailed as far as possible by the omission of figures appearing in the annual returns submitted to the High Court.

(11) Sessions Judges and District Magistrates should describe fully any features of interest in the administration of Criminal Justice in their divisions or districts, and to comment on the working of any provisions of law or rules of procedure to which they think attention should be drawn.

(12) In calculating the percentage of convictions, the number of persons whose cases were disposed of by composition or withdrawal, by dismissal under section 204, Code of Criminal Procedure, by acquittal under section 547, or by discharge under section 259 should be excluded. The figures for such cases—cases compounded, withdrawn or dismissed for default of appearance—should be given separately.

RETURNS OF FINES

Rules for accounts of fines levied and refunded 316 Rules for securing uniformity and accuracy in the accounts of fines levied and refunded by Magistrates and Courts of Session.

Explanation—In these rules "fine" includes money awarded as compensation and any other money recoverable by a Criminal Court like a fine

"Judge" includes Sub Judge and District Munsif.

"Treasury" includes a Sub-Treasury

316-A Deposits of criminal courts lapse in the ordinary course under the rules in Article 359 of the Madras Financial and Account Code, Volume I

The annual statements of lapsed deposits of the Presidency Magistrates' Courts are prepared by the presiding Magistrates. But in the case of Mufassal Criminal Courts, the statements are prepared by the treasury in which the detailed accounts of deposits are maintained

316 B Applications for refund of lapsed deposits shall in the first instance be made to the courts which remitted the deposits, and shall in cases where the application is made after the expiry of one year from the date on which the amount lapsed be stamped with a court fee stamp of annas eight for sums of Rs 50 and under, of one rupee for sums exceeding Rs 50 but not exceeding Rs 1,000 and of Rs 2 for sums exceeding Rs 1,000

CHAPTER XII RECORDS—I INSPECTION AND COPIES INSPECTION OF RECORDS

(a) *Inspection by Police, Salt Excise and Forest Officers and Public Prosecutors.*

317 Whenever it shall appear to any officer of Police, not below the rank of Sub Inspector of Police that an inspection of the records of any criminal trial or appeal will facilitate the detection or prevention of crime or is desired for examination of the conduct of Police officer connected with the case and whenever the inspection of such records may be desired by a Public Prosecutor, in the exercise of his duty as Public Prosecutor, such officer or Public Prosecutor, as the case may be, may apply to the Sessions Judge or presiding Magistrate of the Court in which the records are lodged for permission to inspect the same.

318 The application referred to in the preceding rule shall be made in writing and shall contain a description of the records and shall state the purpose for which the inspection is sought, and the Sessions Judge or Magistrate may grant or refuse the application as he may see fit. If the application is refused, the Sessions Judge or Magistrate shall record the reasons for refusal and shall communicate a copy thereof to the officer of Police concerned, or to the Public Prosecutor as the case may be. If the application is granted, the Sessions Judge or Magistrate shall make arrangements for permitting the inspection to be conducted in accordance with the next following rule

319. Every inspection of records under these rules shall be conducted by an officer of Police not below the rank of Sub-Inspector of Police, or, if the inspection is granted on the application of a Public Prosecutor, then by the Public Prosecutor himself; it shall take place within the precincts of the Court in which the records are lodged and in the presence of an officer of the Court who shall be deputed by the Sessions Judge or Magistrate for the purpose, and no record or part of a record shall be removed by the inspecting officer from the precincts of the Court.

320. The Public Prosecutor, Madras, if he wishes to inspect the original records of Criminal Courts, should requisition the High Court through the Registrar.

Inspection by Public Prosecutor, Madras.

321. Subject to the conditions contained in Rules 317-319 the privilege of inspecting records in Magistrate's Courts is extended:—

(1) Officers of the Salt, Excise and Customs Department of and above the rank of Assistant Inspector in charge of a circle, and

(2) Gazetted officers of the Forest Department so far as such records relate to their respective departments

322. An officer inspecting records under these rules can take extracts therefrom if he considers it necessary to do so.

(b) *Inspection by District Magistrate of Records of Court of Session.*

323. Whenever a District Magistrate requires information with regard to the Sessions trial in addition to that appearing in the Magistrate of records of finding and sentence of the Court of Session he shall be at liberty, after giving due intimation to the Sessions Judge, to depute one of his clerks to inspect the records and make copies or extracts of such parts thereof as appear material for the purposes which the District Magistrate may have in view, and the Sessions Judge shall permit such clerk to inspect the records and take copies or extracts thereof. Every inspection of records under this rule shall be made within the precincts of the Court of Session in which the records are lodged and in the presence of an officer of the Court deputed by the Sessions Judge for the purpose. No record or part of a record shall be removed by the inspecting officer from the precincts of the Court.

COPIES.

324. No copies of, or extracts from, the record of any proceeding of any Criminal Court subordinate to the High Court shall be issued unless certified to be true by the proper officer of the Court. This rule shall not apply to copies or extracts granted to prisoner in confinement under any order passed in such proceedings for the purpose of appeal or application for revision.

325. Copies of any portion of the record of a criminal case must be furnished to the parties concerned on payment of the proper stamp and the authorized fee for copying. Copies to be given to the parties.

Where the Judge's notes form the only record of the evidence, copies of these notes should be given. As an exception to this rule Government have been pleased to direct that in future, copies of the statements under Section 162 of the Code of Criminal Procedure which are recorded in case diaries should be granted free of cost in cases in which the accused is entitled to be defended at the expense of the State. Attention is also invited to Rule 158 above. [P Dis. No. 667 of 1941]

Explanation.—Proper stamp referred to above includes search fees leviable under the Standing Orders of the Board of Revenue. Board's Standing Order 173 (Section 1).

(2) *Scale of search fees*—when the document applied for belongs to a year previous to the current calendar year, a search fee, in Court-fee stamps, according to the sub-joined scale, must be affixed to the application:—

ANNAS.

(a) Fee payable for the first document or entry applied for, or if only one document or entry is applied for, then for that document or entry ... 12

(b) Fee payable for every document or entry other than the first included in the same application, and connected with the same subject ... 6

- (c) When the party does not know to which of two or more years a document or entry belongs, the fee for searching the records of every year other than the first shall be. Annas 6

NOTE—(1) Only one search fee of twelve annas need be paid for all papers filed together and forming a single record. For instance, if a person applies for all the depositions relating to a Magisterial case, he need only pay a fee of 12 annas.

326. If the records of the case or the documents of which a copy is applied for have been sent to another Court, the application for the copy may at the option of the applicant, be forwarded to the said Court for compliance or be returned to him for presentation to the said Court.

327. The correctness of all copies of magisterial records granted on application of private persons and of all copies of calendars and judgments to be submitted to the District Magistrate or the Sessions Judge may be certified by the chief ministerial officer of the Magistrate's establishment.

Note—Under section 76 of the Indian Evidence Act every certified copy issued should bear the seal of the Court.

Endorsements on copies. 328. Every copy shall bear an endorsement showing the following dates —

- (i) Application made
- (ii) Stamp papers (or charges) called for.
- (iii) Stamp papers (or charges) deposited
- (iv) Copy Ready
- (v) Copy delivered or posted.

328-A. In Magistrate's Courts a list of certified copies ready for delivery shall be posted on the notice board of the Court concerned and shall remain there for one week. The list shall state the numbers of the copy applications and the names of the persons to whom the copies are to be delivered. The list shall be affixed to the court notice Board immediately the court opens on the following day. After the expiry of one week the list shall be taken down and any copies which remain unclaimed shall be sent to the applicants by post. "Service unpaid" as prescribed in G. O. No. 340, Public services dated the 21st February 1939 [P. Dis. No 929 of 1941].

329 (1) The Gazetted officers of all departments and all officers who, not being Gazetted officers, are entitled to inspect records, can obtain certified copies of the same. Except as regards officers of the Police Department and Public Prosecutors, such right extends only to obtaining certified copies of records relating to the officer's own department.

(2) The Judge or Magistrate may in his discretion grant or refuse the application. If the application is refused, the Judge or Magistrate shall record the reasons for his refusal and shall communicate a copy thereof to the officer concerned.

(3) Copies of Orders or records which one department of Government proposes to supply to another department on applications shall be made on plain unstamped paper and by the ordinary staff.

(4) If lengthy records are concerned the work should be transferred to the copying staff and the decision as to who should prepare the copy rests with the officer to whom the copy applications made.

The department applying for copies should furnish copy stamp papers for the purpose and debit the cost thereof to its contingent charges

Provided that the cost of making copies of judgments convicting or acquitting Government servants of criminal offences or of orders discharging such servants, which are supplied on application to the heads of departments concerned, shall be debited to the contingent charges of the Courts supplying the copies.

4-A The Jail Department should however be supplied with copies of Copies to Jail Department judgments on plain unstamped paper. If extra staff is required for this purpose, the Government may be addressed for the employment of section writers temporarily. (P.O. No. 605 of 1942)

(5) The above principles also apply to the issue of copies to Public Prosecutors. Copies of documents which are required by them while the trial or appeal is pending, should be made by the clerk of the Court of Session in charge of the records or by some one working in his presence and under his immediate supervision. No charge should be made by the regular establishment of the Court. In cases where lengthy documents have to be copied and the work is done by the Copyist Department, the cost of the copy stamp papers used for same should be debited to the contingent allowances of the Courts issuing copies

Copies of relevant records in Criminal Appeals to Public Prosecutor.

(6) Copies of relevant records in Criminal Appeals should be supplied to the Public Prosecutors either on copy stamp paper or on plain paper at the discretion of the Judge or Magistrate.

330. The Inspector-General of Police has been requested to clearly impress upon all Prosecuting Inspectors the inconvenience resulting from unnecessary applications for copies and Criminal Courts should bring to the notice of District Superintendents of Police any cases in which the right to ask for copies appears to them to have been abused.

331. Where, in a judgment or order, a Magistrate or Sessions Judge impugns the character or conduct of any Government servant, he should, if he regards the matter as serious enough to call for departmental enquiry or action forward a copy of the judgment or order to the head of the department or immediate superior under whom the Government servant is doing service.

Copy of judgment when to be sent to Chemical Examiner.

332. All Magistrates shall forward to be Chemical Examiner copies of their judgment or final order in all cases in which reference has been made to him.

332-A. All Magistrates shall forward to the Professor of Medical Jurisprudence, Medical College, Madras, copies of their judgments or final orders in all cases in which his evidence has been taken.

333. When a person sentenced to death desires to be furnished with a copy of the Sessions judgment, he should be supplied at once with a typed or manuscript copy of the judgment and should not be made to wait till it is printed in the ordinary course.

Person sentenced to death to be immediately supplied with copy of judgment.

334. When a person who has been convicted by a Magistrate applies for another copy of the judgment in addition to that required to be furnished to him under section 371 of the Code of Criminal Procedure, with a view to memorializing Government, he shall be furnished with such second copy, and, in all except summons cases, it shall be furnished free of charge.

Additional copy of judgment when to be furnished to accused.

COPIES OF RECORDS OF VILLAGE MAGISTRATES

335. Applications for copies of records of a Village Magistrate may be made either to the Village Magistrate direct, or to the Sub-Magistrate within whose jurisdiction the Village Court is situated. Every such application must state the manner in which the applicant wishes to have the copies delivered to him when ready, and whether he wishes to—

(1) take delivery of the copies in person from the Village Magistrate or from the Sub-Magistrate concerned, or

(2) have the copies sent to him by registered post from the Court of the Sub-Magistrate

336. In the event of the applicant electing to have the copies sent by registered post he must deposit the necessary fees for postage in the Court of the Sub-Magistrate.

337. When the application is made to a Village Magistrate direct he shall at once call for the necessary stamp papers, and on receipt of the same shall forward the application as well as the stamp papers together with the records of which copies are required to the Sub-Magistrate within whose jurisdiction his village is situated.

338. When the application is made to the Sub-Magistrate within whose jurisdiction the village is situated the Sub-Magistrate shall at once call for the records of which copies are required from the Village Magistrate concerned and on receipt of such records he shall call for the necessary stamp papers

339. In either case the Sub-Magistrate shall have the copies prepared under the existing copyist rules and delivered to the applicant through the channel selected by him. The records shall then be returned to the Village Magistrate

340. When records are transmitted as above they shall be sent by the Village Magistrate concerned by post service bearing, and returned, service paid by the Court to which they were transmitted

CHAPTER XIII RECORDS—II PRODUCTION SUBMISSION AND DESTRUCTION

PRODUCTION OF RECORDS

341. A District Magistrate is legally competent to demand the production of original records in the custody of a Court of Session, which are required for a preliminary enquiry, and any such demand shall therefore be complied with.

342. Where records or documents produced from any Court or Public office are retained by the Criminal Court requiring their production, a receipt containing a descriptive list thereof shall be given to the officer producing them and a duplicate of the receipt shall be placed with the records or documents. Any apparent erasure or alteration in any paper shall be noted in the said list.

343. When any records or official documents are received from any Court or public office by post, the packet shall be opened in the presence of the presiding Judge or Magistrate and the papers compared with the list accompanying them. The instructions contained in Rules 342 and 348 shall then be observed as far as they are applicable.

RETURN OF RECORDS

344. Whenever it shall appear that any public document received from
 Return of records when any Court or public officer no longer required
 no longer required they shall be returned to the Court or officer with a
 descriptive list in a sealed packet

345. Applications from parties or other persons for the return of documents
 Return of documents filed in Court shall be made to the Court in
 application to be made which they were originally filed. If application is
 therefor made for any document which has been transmitted
 to another Court, the Court in which the document was transmitted shall
 self apply for the transmission of the document and accept the return of it
 to the applicant

Provided that no document shall be returned unless the Judge or Magistrate is satisfied that it will not be required for reference in proceedings pending either before his own Court or the Court of Appeal or Revision.

PRESERVATION OF RECORDS

346. A Session Judge should not permit the removal of criminal
 Custody of Sessions trials in his Court to leave his custody except in so
 records, accordance with the express provisions of law save as
 provided in Rules 317/322 any person is fully competent to order and production
 of the original whether at the instance of Government service or a private
 individual should if he wishes to examine the record be required to apply for
 and obtain certified copies in accordance with the rules made in that behalf

347. Warrants of commitment which are re-
 turned to Courts after the execution of sentences
 should be filed with the records of the respective
 cases and dealt with under the rules for destruction
 of records.

348. The public records or documents shall so long as they remain in
 Records to be kept in the custody of Court which required the reproduction,
 packet sealed and labelled be kept in a sealed packet properly labelled and the
 packet shall not be opened except in the presence of the presiding Judge or
 Magistrate.

SUBMISSION OF RECORDS AND MATERIAL OBJECTS TO THE HIGH COURT

349. Criminal Courts shall see that records called for by the High Court
 Submission of records are submitted promptly Any delay shall be explained
 and material objects in the letter advising despatch of the records.

The following cases shall be treated as urgent —

- (i) References under section 374, Criminal Procedure Code ;
- (ii) References under section 307, Criminal Procedure Code (when the accused are on remand);
- (iii) Criminal Revision Cases in which the accused have been called upon to show cause why sentence of death should not be passed on them,
- (iv) Appeals against acquittal in which the accused are re-arrested and are in custody ;
- (v) Criminal Revision Cases in which notice of enhancement of sentence has been issued and the accused are in jail on short sentences ,
- (vi) Criminal Appeals and Revision Cases in which bail is refused and the accused are in jail on short sentences and
- (vii) Criminal Appeals and Revision Cases where stay of proceedings in any criminal case is ordered pending their disposal.

Records to be submitted 350 I The following records shall be submitted to the High Court. —

(1) In cases submitted under section 374, Code of Criminal Procedure and in all cases of conviction for murder whatever may be the sentence passed by the Court and in all cases of appeals against acquittals in murder cases—

- (a) The entire original Sessions record
- (b) The entire original Magisterial record
- (c) Translations of all vernacular parts of (a) and (b)

(2) In cases submitted under section 307 Criminal Procedure Code—

- (a) The entire original Sessions record
- (b) The entire original Magisterial record
- (c) Translation of all vernacular parts of (a).

Note —With regard to the translations referred to above—

(i) It will suffice if only those parts of the inquest report which have been admitted in evidence are translated

(ii) It is not necessary to translate papers which have not been treated as evidence in the case.

(iii) Only such statements of witnesses examined in the Committing Magistrate's Court as have been treated as evidence under section 298 of the Code of Criminal Procedure or marked as exhibits for the purpose of corroborating or contradicting statements made by the same witnesses in the Court of Session require to be translated

(iv) Translations of documents submitted to the High Court shall be written on one side of the paper only. A fair margin shall be left and the lines shall not be too close to one another

(3) In Sessions cases tried with Assessor, and sent up on Appeal or Revision—

Same as 2.

(4) In Sessions cases tried by Jury and sent up on Appeal or Revision—

- (a) The entire original Sessions record.
- (b) The entire original Magisterial record
- (c) A translation of so much of the vernacular parts of (a) and (b) as was laid before the Jury.

(5) In cases of Appeals not already provided for and in cases of Revision—

- (a) The material part of original case record including and extract from the diary.
- (b) The material part of the appellate case record, if any.

II.—Other Instructions

(6) The words "entire original Sessions record" include the evidence, Meaning of entire original Sessions record oral and documentary, the charge, the plea of the accused, the opinion of the assessors or verdict of the jury, the judgment or charge to the jury and the statement of the accused before the Committing Magistrate.

Note —In all cases in which the charge actually delivered and taken down by the shorthand writer is not submitted, a transcript of the shorthand notes shall be sent up together with the heads of charge.

(7) The words "entire original Magisterial record" include an extract from the Diary, Register of Preliminary Enquiry, Police Occurrence Reports, Mahazars and Village Officers' Reports and Proceedings (if any) before any Magistrate other than the Committing Magistrate, who may have dealt with the case, but do not include so much of the Magisterial record as may have been incorporated in the Sessions Court record.

(8) The covering letter for all records shall be sent separately from them by post. Any delay in submitting the records shall be explained in the covering letter advising despatch of records. It shall state when and how and in how many parts the records are despatched.

Covering letter.
English and vernacular parts of records

(9) In every case sent up to the High Court—

(a) The English part of the Sessions record, if any including translations,

(b) the vernacular part of the Sessions record, if any,

(c) the English part of the Magisterial record including translations, and

(d) the vernacular part of the Magisterial record must be bound and indexed separately.

(10) Eight spare copies of judgment in cases referred under section 374 Criminal Procedure Code, and six copies in other Sessions trials should be sent with the record.

Copies of judgment.
They should not be paged and entered in the index but should be kept separate from the record.

(11) The docket on the fly-leaf of all records and the covering letter should specify the number of the case on the lower Court's file and the number of the Appeal or Revision case or petition on the High Court's file.

Note.—The fly-leaf shall be of sufficient thickness and of foolscap size.

Foolscap paper to be used.

(12) The calendar, translations, copies, notes of evidence, etc., shall, wherever possible, be written on foolscap paper of sufficient substance.

(13) Every record shall, before despatch to the High Court, be examined and certified as complete in accordance with the foregoing rules by the head minister or officer of the Court forwarding it.

Examining and certifying before despatch.
Where copies of depositions, verified as to accuracy or not, are made out for the use of the Judge or for any other purpose and are available, they shall be submitted to the High Court with the records to facilitate printing of the evidence if necessary. Indications shall however be given in the covering letter or in some prominent place in the copies themselves to show whether the copies are accurate or whether they require to be compared with the original.

III.—Translations.

(14) In cases referable to the High Court the translator shall be required to translate not less than ten pages of the record per day, and any delay which may take place in this respect, or in fair-copying the translations or in transmitting the record to the High Court, shall be fully explained by the Sessions Judge in his letter of reference.

(15) Where two or more cases may be set down at the same Sessions for reference to the High Court, an additional translator should be employed to translate the record of each case, the expense being charged to the Government in a contingent bill at the rate of one rupee for every three hundred words.

Employment of additional translator.
The same course shall be followed where the record of a single case is so voluminous that the Court translator cannot be expected to translate it within a reasonable time.

351. The charge to the jury as recorded by the shorthand writer of the Court shall be submitted to the High Court without any alteration further than correction of merely verbal or grammatical mistakes. But if for any reason, the Judge submits the heads of charge in a condensed form he shall submit therewith a transcript of the shorthand notes recorded by the clerk.

352. When on perusal of the Calendar in a sessions case submitted under Rule 294 the High Court calls for the record the Sessions Judge shall unless the whole record is specifically called for submit at once the portion of the record which is in English retaining the vernacular portion to be submitted later if called for by the High Court. A note that the English portion has already been submitted shall be made in the index, when the vernacular portion is submitted.

353. In filling up the indexes accompanying records of criminal cases care shall be taken not merely to give the names of witnesses in full but also to indicate within brackets after the names their official designation, if any.

354. Courts of Session when sending up statements of accused recorded in vernacular in the vernacular part of records shall place in the corresponding part of the English record accurate translations of these statements. The notes made by the Judge during the examination cannot and will not be accepted in lieu of such translations.

355. Police diaries and English translations of or notes from these diaries submitted to the High Court should be placed in a sealed cover.

356. When a reference is made to or notice of an appeal or revision is received from the High Court the Judge shall determine whether any or which of the material objects marked as exhibits in the case shall be sent to the High Court and in exercising his discretion he shall consider whether the object can be conveniently transmitted and whether an inspection thereof will assist the High Court.

Provided that the weapon substance or article whereby the offence is said to have been committed and all garments stained with blood shall be sent unless the Judge otherwise directs.

Courts of Session shall enclose with the records in Sessions Cases submitted to the High Court a list of material objects in judicial form No 129-A.

Notes—under this proviso all material objects should be sent to the High Court that have been used for the commission of the offence—137 M W N. 549 Or 109.

357. In every case in which any material object is retained, the order of the Judge directing such retention should form part of the record submitted to the High Court classified under item 10 'other miscellaneous papers if any' with English part of the Sessions record, the page assigned to the paper being shown against item 6 (b).

358. Articles received from lower Courts such as sticks stones, knives, bill-hooks axes, guns, rags of clothing, earth, etc., and all articles of trifling value are ordinarily retained in the High Court and destroyed there. Any application for the return of these articles (for return to parties or for reference in any other case) or of any articles that the High Court has omitted to return shall be made within one month from the date on which the records of the case are received back in the lower Court.

Provided that such of the articles as may be required for the Police Training School Museum, Vellore, shall be returned to the District Superintendents of Police of the Districts concerned at their request after the appeal time has expired. [P. Dis. No. 250 of 1945]

359. Material objects exhibited at the trial of criminal cases should be retained by the Court until the Court is satisfied that the appeal time has expired and that no appeal has been presented or that any appeal presented has been disposed of. After that, they may be destroyed or otherwise disposed of according to the rules.

Provided that in a sessions case where the material object is a confiscated weapon other than a firearm or ammunition and is in the opinion of the Sessions Judge of a most unusual character or of special interest in the light of the facts of the case, it shall be ascertained by reference to the Professor of Medical Jurisprudence of the Medical College, Madras and the Principal of the Police Training School, Vellore whether it is required for the Medical Legal Museum of the College or for the Police Museum in the school. The weapon will be destroyed only if it is not so required. If so required it shall be sent either to the Professor of Medical Jurisprudence or the Principal Police Training School. The former will, however, have priority over the latter in respect of weapons for which there is a demand from both of them. [P. Dis. No. 11 of 1942.]

Provided further that such of the material objects as may be required for the Police Training School Museum Vellore shall be returned to the District Superintendents of Police of the districts concerned at their request after the appeal time has expired. [P. Dis. No. 250 of 1945]

DESTRUCTION OF RECORDS

360. (1) An index in Administrative Form No. 58 shall be put up with the Destruction of useless record of every case on its first institution and each records paper as it is filed with the records shall be entered in such index except in the following cases —

- (a) all cases instituted in Bench Courts, and
- (b) cases under the Madras Traffic Rules, 1938, and the Prevention of Cruelty to Animals Act, 1860, instituted in other Courts. [P. Dis No 89 of 1943]

(2) Every record shall, after its completion and immediately before it is deposited in the record room, be divided into parts as shown in the table given in Part B and to facilitate this division each paper, shall, so soon as it is filed with the record, be numbered and marked off in the index as appertaining to one or another of such parts

Other documents which have been produced by parties but have either not been tendered in evidence, or, having been tendered in evidence have been rejected, shall be kept apart from the record of the case or other proceeding to which they belong and shall, if not reclaimed by the party who produced them, be retained in the Court in which they were produced for a period of one year from the date of the final order of the Court in the case or proceeding in which the documents were produced, and shall, at the expiration of that period, be destroyed in the manner prescribed by sub-rule (6) *infra*.

Provided that notice of destruction shall be given in the manner prescribed by sub-Rule (7), *infra* in the month of January succeeding the date of expiry of the period of one year referred to in this rule and also by affixing to the notice board of the Court (at the time of publication in the Gazette) a copy of the notice published in the District Gazette. Sub Rule (8), *infra*, shall not apply to such documents.

No application is necessary for the return of the documents produced, which have either not been tendered in evidence, or, if tendered, have been rejected. It is sufficient if a receipt for their return is taken in the list with which they have been put up.

(3) The parts of records described in the table given in Part C shall be retained for the periods respectively specified against them from the date of their completion, provided that in any case the presiding Judge or Magistrate may, for reasons to be recorded in writing, direct that any of the papers in any one part be transferred to any other part for which a longer period of retention is prescribed; in which case the fact shall be noted in the index and the papers dealt with as if they had belonged from the commencement to the part to which they were so transferred.

(4) The Court registers, books and papers described in the table given in Part D shall be retained for the periods respectively specified against them reckoning from their respective dates or from the dates at which they close.

Provided that the Sessions Judge or District Magistrate may, in his discretion, direct the retention for a longer period or permanently of papers which he may consider likely to be useful in the future, as containing the results of inquiries or other information or the opinions of experienced officers in matters connected with the general administration of justice; and provided also that no criminal Court subordinate to the Magistrate of the district shall cause any papers to be destroyed under the next succeeding sub rule without having first obtained from such Magistrate of the district, as the case may be, permission in writing to do so

Where any document of which the destruction is ordered by these rules is, before it has been destroyed, made evidence in any other case or proceeding, the rule regulating its destruction shall be the rule applicable to evidence filed in such case or proceeding where the period prescribed by such last-mentioned rule is in excess of the period prescribed by the rule which originally governed its destruction.

(5) All records, books and papers described in the tables given in Parts C and D shall be destroyed without fail at the expiration of the periods respectively indicated against them

Provided that documents produced in Courts by Government officials shall not be destroyed, but shall, if not previously returned, be transmitted to the responsible officers on the expiry of the period prescribed for their retention.

(6) All records, books and papers to be destroyed under sub-Rule (5) shall be burnt in the presence of the record-keeper

Whenever records, books or papers are destroyed under sub-Rule (5), a complete list of the records, books or papers so destroyed shall be prepared and the date of destruction shall be entered at the head thereof. It shall be the duty of the record keeper (or his assistant, if there is one) to certify the correctness of these lists. Whenever in Sessions cases judgments in which the sentence passed is one of transportation for life are destroyed, the record-keeper or his assistant, as the case may be, shall also certify that the judgment is destroyed either because a report of the convict's death has been received or because the convict has been released.

(7) To enable parties, who have filed documents in Court, to withdraw the same before the period appointed for their destruction, a notice shall be published in the District Gazette in January of each year stating that all documents filed in the cases (to be therein enumerated) will, unless previously reclaimed, be destroyed at the expiration of the period indicated in the notice; and the following note shall also be entered at the foot of every copy of a judgment or order granted to any of the parties to the case or proceeding in which such judgment or order was made or to the pleaders or authorized agents of such parties:—

"The parties should apply as soon as possible for the return of all exhibits which they may wish to preserve, as the record will be liable to be destroyed after three years from this date."

(8) The above rules do not apply to non-magisterial records of Revenue Officers, such as Gazette files etc., but apply only to the judicial records of these officers.

(9) In order to facilitate the work of destruction of records there shall be maintained in the record-room of each Court other than a Bench Court a register in the Administrative Form No. 27.

Bench Courts shall make use of column No. 12 of Criminal Register No. 25 (Register of Summary Trials) for ascertaining the date on which records are to be destroyed. [F Dis. No. 74 of 1942]

The index paper itself and the Diary need not be entered in the index. The date of issue of processes shall be entered in column 2 of the form and the date of return after execution in column 4. The dates on which depositions and judgments are completed or signed by the Judge shall be entered in column 2 and the date of receipt by the clerk shall be shown in column 3.

(10) Documents which are required for the Police Training School Museum, Vellore, shall be sent to the District Superintendent of Police of the Districts concerned at their request after the appeal time has expired [P Dis. No. 250/45.]

CHAPTER XIV. COURT-FEES, BAITA TO COMPLAINANTS, WITNESSES, ACQUITTED PERSONS, JURORS, APPENDICES AND CHARGES FOR CONVEYANCE OF PRISONERS.

(a) REMISSION AND REDUCTION OF COURT-FEES.

361. Under Section 33 of the Court Fees Act VII of 1870, as amended by Notification reducing Section 4 of Act XXXVIII of 1920, and in supersession and remitting Court fees. of all previous notifications on the subject it is hereby notified that in exercise of the power to reduce or remit in the Presidency of Fort St. George, all or any of the fees mentioned in the first and second schedules to the said Act the Governor in Council has been pleased to make the reductions and remissions hereinafter set forth, namely —

(1) To remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

(2) To remit the fees chargeable under Articles 6, 7 and 9 of the first schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or office for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited, or recorded in any Court of Justice or received by any public officer;

(3) to remit the fees chargeable on the following documents, namely:—

(a) copy of a charge framed under Section 210 of the Code of Criminal Procedure (V of 1898) or of a translation thereof, when the copy is given to an accused person,

(b) copy of the evidence of supplementary witnesses after commitment when the copy is given under Section 219 of the said Code to an accused person,

(c) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under Section 371 of the said Code to an accused person.

(d) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under Section 371 of the said Code is in jail,

(e) copy of an order of maintenance, when the copy is given under Section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub clauses without the payment of a fee, but is a copy which on its being applied for under Section 548 of the said Code the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Crown before any Criminal Court, [P. Dis. 409 of 1941.]

(h) copies of all documents which any such Advocate Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Crown in connection with any criminal proceedings, [P. Dis 409 of 1941]

(i) copies of judgments or depositions required by officers of the Police Department in the course of their duties

(4) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office ;

(5) to direct that no Court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority ,

(6) to remit the fees chargeable on applications for copies of documents detailed in clause (3) *supra* ,

(7) to remit the fee payable under Article 10 of Schedule II on memoranda of appearance filed by advocates when appearing for persons proceeded against in criminal cases (Substituted by G O No 4910, Home dated 10th November 1941.),

(8) to remit the fee chargeable under Article 10 of Schedule II of the Madras Court fees (Amendment) Act, 1922 (Madras Act V of 1922), in respect of a vakalatnama, or any paper signed by an Advocate signifying or intimating that he is retained for a party, when presented to any Criminal Court for the conduct of any prosecution on behalf of a municipal council to which the Madras District Municipalities Act, 1920 (Madras Act V of 1920), applies or on behalf of the Corporation of Madras or a Local Board to which the Madras Local Boards Act, 1920 (Madras Act XIV of 1920), applies

This applies also to papers filed by High Court vakils and first and second-grade pleaders practising in mufassal Courts ,

(9) to remit the fees chargeable on applications, petitions and copies which are filed, exhibited or recorded in, or received or furnished by Village Courts and plaints and complaints filed and information laid, in panchayat Courts constituted under the Madras Village Courts Act, 1889 (Madras Act I of 1889), as amended by Madras Act II of 1920

(10) To remit the fees chargeable under Article 6 of Schedule II to the Court Fees Act (VII of 1870), as amended by the Madras Court Fees (Amendment) Act, 1922 (Madras Act V of 1922) in respect of bonds executed under Section 517 (4) of the Code of Criminal Procedure, 1898, for the restoration of property.

(11) To remit the fee-chargeable under Article 6 of Schedule II to the Court Fees Act, (VII of 1870), as amended by the Madras Court Fees (Amendment) Act, 1922 (Madras Act V of 1922), in respect of bonds executed under section 562 of the Code of Criminal Procedure, 1898, to keep the peace and be of good behaviour.

(12) To remit the fee chargeable under Article I (b) of Schedule II to the Court Fees Act, 1870 (VII of 1870), as amended by the Madras Court Fees (Amendment) Act, 1922 (Madras Act V of 1922) in respect of applications for execution of maintenance orders under sub-section (3) of Section 488 and Section 490 of the Code of Criminal Procedure 1898 (V of 1898) in cases where the amount of arrears of maintenance recoverable does not exceed Rs. 25

(13) To remit the fees chargeable on copies of judgments accompanying a petition by a prisoner.

(14) To remit the fees payable under Schedule II upon the undermentioned petitions filed by or on behalf of local boards municipalities and the Corporation of Madras

(i) Petitions for adjournment under Section 344 Code of Criminal Procedure, 1898,

(ii) Petitions for transfer of a case under Section 526, Code of Criminal Procedure, 1898; and

(iii) petitions for filing additional list of witnesses

(15) to remit the fees payable under Schedule II upon all petitions containing complaints of offences under the Prevention of Cruelty to Animals, Act 1890 (VI of 1890) presented by or on behalf of the Society for the Prevention of cruelty to Animals Madras or any of the branch societies. [P. Dis. 409 of 1941]

(16) To remit the fees payable under Articles 6, 6-A, 7 and 9 of Schedule I on certified copies of documents filed in Criminal Court on behalf of the Crown. [P. Dis. No. 394 of 1941.]

(b) CANCELLATION OF STAMPS

362. Under Act VII of 1870, Section 30, Court-fee labels are cancelled by punching out the figure-head, but this does not perhaps afford sufficient protection, and, pending further consideration on the subject, the Central Government directs that the record-keeper of every Court shall, when a case is decided and the record assigned to his custody, punch a second hole in each label distinct from the first, and note the date of his doing so at the same time. The second punching should not remove so much of the stamp as to render it impossible or difficult to ascertain its value or nature. [P. Dis. No. 409 of 1941.]

363. The attention of all Courts and officers having to deal with Court-fees, punching of fees stamp is called to the importance of punching out from the stamps the figurehead and destroying the piece punched out before taking action upon the documents to which the stamps may be attached. The Court or office issuing copies, certificates, or other similar documents liable to stamp duty, shall before issue, cancel the labels affixed to them by punching out a portion of the label in such a manner as to remove neither the figurehead, nor the part of the label upon which its value is expressed. As an additional precaution, the signature of the officer attesting the document with the date, should be written across the label and upon the paper on either side of it as is frequently done by persons signing stamped receipts

The above directions apply only to adhesive labels used under the Court-Fees Act. Impressed stamps used for denoting Court-fees need not be cancelled or punched otherwise than as required by Section 30 of the Court Fees Act.

FEES FOR SERVICE OF PROCESS.

364. All payments for the service of processes by the Criminal Courts in the mu'assal subordinate to the High Court, in the case of offences triable by summons case procedure, other than offences for which the Police may arrest without warrant, shall be collected according to the rates fixed in the sub-joined schedule —

Schedule—Criminal Courts.

		Rs.	A.	P.
(1) Summons to defendant	0	8 0
And for every additional defendant, if applied for at the same time and if resident in the same neighbourhood	0	4 0
(2) Summons to a witness	0	8 0
And for every additional witness, if applied for at the same time and if witness resides in the same neighbourhood	0	4 0
(3) Warrant of arrest	0	12 0
(4) Notice (including notice to parties in revision petitions and other applications) order, injunction or warrant, not otherwise provided for			0	8 0

(1) If a process is to be served or executed within a radius of six miles from the Court-house, half the above rates only shall be charged. The Judge or every Court shall determine what villages are within the above radius, and a list of such villages shall be notified in a conspicuous place in the Court-house.

(2) When a warrant remains unexecuted for 15 days after its delivery to the officer entrusted with its execution an additional fee at the same rate shall be levied from the party, at whose instance the warrant was issued for every 15 days or portion of 15 days until return is made, provided that the delay in executing the said warrant is not attributable to the officer of the Court.

(3) This shall not apply to warrants issued under Planters Labour Act (Madras Act I of 1903) and forwarded to an officer of the Labour Department of the United Planters' Association of Southern India under the terms of G. O. No. 101, Judicial, dated the 12th January, 1916 and G. O. No. 1074, Home (Miscellaneous), dated the 21st September, 1917 as modified from time to time.

(4) This rule applies only to proceedings in non-cognizable cases whether these be calendar cases, appeals or revision cases. No fees for service of processes should be levied in Criminal Revision Petitions in cognizable cases.

Note.—A non-cognizable offence dealt with jointly with a cognizable offence in a single proceeding is a cognizable offence within the meaning of this rule.

365. No fees shall be levied on processes issued upon complaints by public servants or officers or servants of a Railway Company acting in their official capacity, which under Section 19, clause (xviii) of the Court-Fees Act, 1870, are exempt from complaint fees.

The Central Government have ruled that a Cantonment Authority is not a "Public Officer" as defined in the Code of Civil Procedure, 1908, and consequently must pay process-fees and diet money to witnesses. The Government therefore direct that process-fees and diet money to witnesses should, in future, be collected from the Cantonment Authority in all cases of prosecutions by the Police on their behalf. A Cantonment Authority is, however, exempt from the payment of court-fees on complaints, under Section 19 (xxiii) of the Court-Fees Act, 1870 as it is a "Public servant" as defined in Section 21 of the Indian Penal Code (G. O. No. 3364 M. S., dated the 30th August, 1929).

EXPENSES OF COMPLAINANTS AND WITNESSES.

(a) *In the City of Madras*

366. Subject to the provisions hereinafter contained, the expenses of witnesses shall be paid on behalf of Government in the following classes or cases, viz. —

(a) Cases shown in the second schedule of the Code of Criminal Procedure as not bailable.

(b) Cases in which the prosecution is instituted or carried on under the orders or with the sanction of the Government or of any public servants acting as such. [P. Dis. No 644 of 1940.]

(c) Where the witness in question has been compelled to attend by a process issued under Section 540 of the Code

(d) Cases in which the Courts certifies that the attendance of such witness was directly in furtherance of the interest of public justice.

367. For the purpose of these rules witnesses shall be classed as belonging either to the special class or any one of the other three classes specified in Rule 366. The Magistrate before whom they are required to appear or, in the case of witnesses from mufassal, the Magistrate of the district from which they come, shall fix the class with due regard to the station in life of each individual.

Provided that no person shall be declared as coming under the "special class" and be permitted to draw the rates admissible for that class except for special reasons to be recorded by the Magistrate.

368. The following are the maximum rates which may be awarded to the several classes of witnesses and no expenses in excess of, or other than, those here provided for, shall be allowed—

Class of witnesses.	Travelling allowance, if any, incurred				Subsistence allowance.	Carriage hire allowance allowable for days of actual attendance.
	By rail	By a public motor service.	By road otherwise than by public motor service.	By sea or canal		
Special class.	1st class fare.	1st class fare.	As 8 per mile.	Actual expenses of passage.	Rs. 3 per day.	Actual reasonable expenses.
I	1st class fare.	1st class fare.	As. 6 per mile.	Do.	Rs. 2 per day.	Rs. 2 per day.
II	2nd class fare.	2nd class fare.	As. 2 per mile.		Rs. 1 per day.	Rs. 1 per day.
III	3rd class fare.	3rd class fare.	As. 2 per 10 miles.		As. 5 per day.	Nil.

Provided that for the duration of the present War third class witnesses attending Criminal Courts, shall be allowed subsistence allowance at the rate of 8 annas per day and travelling allowance at the rate of 4 pies per mile for journeys by road otherwise than by public motor service. [P. Dis. No. 204 of 1944.]

368-A. Non-official witnesses from Ceylon are entitled to travelling allowance in accordance with the rates admissible to them under the relevant financial regulations of the Ceylon Government for the time being.

369. All disbursements under these rules shall be made by the Courts before which the witnesses appear.

Disbursements.

370. Witnesses resident in the Presidency town will be entitled only to such actual expenses as they may show to the satisfaction of the Court that they have been obliged to incur in obedience to the process or order of the Court.

371. Witnesses sent from the mufassal will be furnished with a certificate showing the class to which they belong, the date of their departure, and the correct distance, if any, to be travelled by road; and unless such certificate is produced, the Court may disallow all or any of the expenses claimed.

372. Mufassal Magistrates may make reasonable advances to witnesses summoned by the High Court or Presidency Magistrate and requiring such advances to enable them to reach Madras, but shall in every such case note the same on the certificate referred to in Rule 371. The Courts before which they are directed to appear shall be advised of such advances and they will refund the amount to the officer making the advance.

Note.—Under this rule, the District Magistrate, C. and M. Station, Bangalore is competent to grant advances to witnesses summoned by the High Court in Sessions cases. (H. C. P. Dis. No. 517 of 1927.)

FEEES FOR WITNESSES FROM THE FINGER-PRINT BUREAU.

373. (1) Fees for the services and expenses of expert witnesses from the Finger-print Bureau should be credited to Government, except the travelling allowance which should be paid to the experts. In cases where the opinion of a Finger print Expert is disputed, a second opinion may be obtained from an expert attached to another Finger-print Bureau.

(2) When the Government Examiner of Questioned Documents or his Assistant is required to travel in order to give evidence or for any other purpose, the authority or party employing his services will be required to pay travelling allowance at the rates laid down for the first grade officers in the Supplementary Rules of the Central Government for journeys on tour. The travelling allowance will also be payable for the peon accompanying the Officer at the rates fixed for Central Government peons. These payments will be adjusted as directed in Home Department letter No. F. 128/VII 27 Police dated the 12th January 1928 (vide Appendix in G. O. No. 1790, Law (General), dated 14th June 1934.) [P. Dis. No. 409 of 1941.]

374. Wherever it is practicable for witnesses to travel by rail or steamer, they shall be allowed no more than the rates prescribed for those modes of conveyance.

375. Subsistence allowance may be paid for the days occupied in travelling to Madras as well as in the return journey. The subsistence allowance at Madras will cease as soon after the conclusion of the inquiry or trial as the means of quitting the town become available.

376. It shall be competent to the Court before which a witness appears to disallow payment of any expenses on behalf of Government, if for any cause such Court thinks fit to do so.

377. The Court will disallow the whole or part of the expenses of any witness for the defence whose evidence may not seem to it to have been material, unless it is satisfied that such witness has been brought down to Madras against his will and that no compensation for his expenses has been paid or deposited by the accused.

Public servants to whom Madras Travelling Allowance Rules apply.

378. In applying the foregoing rules to public servants to whom the Madras Travelling Allowance Rules are applicable, the following additional rules shall be observed:—

(1) When a public servant appears in any case under Rule 366 to give evidence in his official capacity, that is, evidence of facts within his knowledge as an official, no payment shall be made to him, but the Court will give him a certificate setting forth that he appeared to give evidence of what had come to his knowledge or of matters with which he had to deal, in his official capacity, the dates on which he appeared and the period for which he was detained, so as to enable him to draw travelling allowance and batta under the Madras Travelling Allowance Rules.

Exception.—In cases in which a public servant has to give evidence at a Court situate not more than five miles from his headquarters, the Court is authorized, where it considers it necessary, to pay him the actual travelling allowances incurred.

(1-A) When at the instance of the Crown, a public servant appears before any Court at his headquarters to give evidence in his official capacity he shall not be paid any allowance.

(2) When a public servant appears in his official capacity as a witness in a case which does not come under Rule (1) (e.g., in a case in which section 244 (3) or 257, Code of Criminal Procedure, is applied), the party at whose instance he is summoned shall prepay into Court the travelling and halting allowances admissible to him under the Madras Travelling Allowance Rules. The amount so prepaid shall be credited to Government but the Court shall give the witness a certificate containing the particulars specified in sub-Rule (1.) *supra*, so as to enable him to draw the travelling and halting allowances admissible under the Madras Travelling Allowance Rules. When a public servant appears to give evidence in any case as a private person, travelling allowance and batta may be paid to him in the ordinary manner but the Court shall send an advice of all such payments made to him to the head of the office in which he is employed. In this advice the amount paid as batta and the period during which the attendance of the witness in Court was necessary shall be stated.

(3) When an official of the Court of Wards appears in his official capacity as a witness in a case connected with an estate under the superintendence of the Court of Wards, the Judge or Magistrate before whom the trial takes place will furnish such official with a certificate showing the days on which he attended to give evidence and the amount of batta and travelling allowance paid to him on that account.

(4) When a public servant, whose emoluments are governed by the Army Regulations, India, appears in any case under sub-Rule (1) to give evidence in his official capacity, he shall be paid the travelling allowance and batta admissible under these rules, and shall be furnished with a certificate showing in detail the amount paid. If the amount paid is less than the amount admissible to him under the military rules to which he is subject, the difference will be paid to him by the military authorities on production of the certificate.

(5) When Engineers and Health Officers lent to local boards and municipalities attend Court to give evidence in their public capacity and not either in their private capacity or in a prosecution instituted by the local body, they shall be paid travelling allowances and batta from provincial funds, at the same rates as would be admissible to Government servants of similar grades under the Madras Travelling Allowance Rules.

379. Medical subordinates in Local Fund or Municipal employ, including Medical witnesses in Government servants lent to, and paid by, local bodies, Local Fund or Municipal when attending Court to give evidence in their public employ. capacity shall be paid the same rates of travelling allowance and batta as would be admissible to Government servants of similar grades under the Madras Travelling Allowance Rules.

Note.—Compounders, midwives and nurses in Local Fund and Municipal employ will be treated as Medical subordinates for purposes of this rule

379-A. Rural Medical Practitioners when attending Court to give evidence in their capacity as Rural Medical Practitioners shall be paid the same rates of travelling allowance and batta as would be admissible to Government servants belonging to Grade IX of the Madras Travelling Allowance Rules [P. Dis. No. 285 of 1939.]

379-B. Honorary Medical Officers when attending Court to give evidence in their official capacity shall be paid the same rates of travelling allowance and batta as would be admissible to Government servants belonging to the respective grades of the Madras Travelling Allowances Rules as set out below

Honorary Surgeons and Honorary Physicians. Grade IV.

Honorary Assistant Medical Officers. Grade V. [P. Dis. No. 406 of 1940]

379-C. When an employee of the Central Government or a State Railway appears to give evidence in his private capacity, the sum due to him as subsistence allowance or compensation shall be credited to the Central Government or State Railway concerned and no payment on account of subsistence allowance or compensation shall be made to him. (G. O. No. 1713, Home, dated 4th April 1941.)

380. Subjects of the French Government, who are in the official employ of that Government in the French Establishments in India, appearing as witnesses before Criminal Courts in the Madras City may, if such claim be made, be paid their expenses at the rates to which they are entitled under the regulations of their own Government in like case. Magistrates are required to refer any doubtful claim under this rule for scrutiny to the Collector of South Arcot [P. Dis. No. 644 of 1940].

381. Officials of the Government of Ceylon appearing as witnesses before Courts in Madras City may, if such claim be made, be paid their expenses at the rates to which they are entitled under the regulations of their own Government in like case. The claim should be submitted through the head of the department to which the official belongs.

382. (1) Officials of the Madras Government appearing as witnesses on summons before the Criminal Courts of any of the States. Mysore, Travancore, Cochin, Pudukottai, Sandur and Banganapalle Darbars to give evidence regarding facts of which they have official knowledge and officials of any of the above States appearing as witnesses on summons before Criminal Courts in the Madras City to give evidence regarding facts of which they have official knowledge may, if such claim be made, be paid their expenses by the Courts before which they appear at the rates to which they are entitled under the regulations of their own Government.

(2) Officials of either the Madras Government or the Government of His Exalted Highness the Nizam appearing as witnesses on summons before the Criminal Courts of the other to give evidence regarding facts of which they have official knowledge will be paid travelling allowance at its own rates by the Government under which they are serving on production of attendance issued by the Courts before which they appear as witnesses.

383. Officials employed by the Madras Government or by Central Government or by the Government of Bombay, Bengal, the Punjab, Bihar, Orissa, the Central Provinces and Berar or the North West Frontier or by the Government of Burma or by the Chief Commissioners of Coorg, Ielni, Ajmeer, Merwara, Panth-Piploda and Baluchistan or by the Crown Representative, appearing in in which the Crown is a party, as witnesses on summonses before the Criminal Courts of any of the other Governments or in the Chief Commissioner's Provinces or in the administered area under the control of the Crown Representative to give evidence regarding facts of which they have official knowledge will on production of certificates of attendance issued by the Courts before which they appear as witnesses, be paid travelling allowances by the Crown Representative if the witness is employed by him and in other cases by the Government or the Chief Commissioner under whom he is employed at their own rates. In cases where the Crown is not a party such officials will be paid travelling allowances by the summoning court according to its rules and the charges will be borne by the Crown Representative in case the court is within the administered area under his control and in other cases by the Government or the Chief Commissioner of the Province within whose limits the summoning court is situated.

When any of the Governments or the Chief Commissioners mentioned above or any official employed by the Crown Representative requisition the services of an official of a commercial department as a witness or any other official as a technical or expert witness within the meaning of Section 45 of the Indian Evidence Act, 1872 (I of 1872) the pay of the official concerned for the period of his absence from his headquarters and travelling allowance and other expenses due to him will be borne by the Crown Representative if the requisitioning official is employed by the Crown Representative and in other cases by the requisitioning Government or the Chief Commissioner concerned. The travelling allowance in such cases will be regulated by the travelling allowance rules applicable to the official summoned. The charges will in the first instance be borne by the Crown Representative in case the official summoned is employed under the Crown Representative and in other cases by the Government or the Chief Commissioner under whom he is employed and will be passed on after audit for payment to the Crown Representative in case the requisitioning official is employed under him and to the requisitioning Government or the Chief Commissioner as the case may be in other cases. [P. Dis No. 52 of 1944]

383-A Officials of the Government of the Federated Malay States employed in India appearing as witnesses before Criminal Courts in Madras City may, if such claim be made be paid their expenses at the rates of which they are entitled under the Regulations of their own Government in like case. The claim should be submitted through the head of the department to which the official belongs.

383-B. Police officials of the Madras Government or the Government of India employed in the Mysore Assigned Tract (Civil Police officials employed in the Mysore Assigned Tract (Civil O & M Station Bangalore and Military Station, Bangalore) appearing as witnesses before the Criminal Courts of the other will be paid travelling allowance at its own rates by the Government under which they are serving on production of certificates of attendance issued by the Courts before which they appear as witnesses.

(b) *In Mufassal Courts.*

384. Subject to the provisions of Rules 384-A and 384-B, the Criminal Courts will pay, at the rates specified in Rule 387, the expenses of complainants and witnesses in cases in which the prosecution is instituted or carried on, by or under the orders, or with the sanction of the Government, or of any Judge,

Magistrate or other Public Officer, when it shall appear to the Judge or Magistrate presiding over such Courts to be directly in furtherance of the interests of public justice; also in cases entered in column 5 of the Schedule II, appended to the Code of Criminal Procedure, as not bailable; and in all cases in which the witnesses are compelled to attend by a Magistrate under the provisions of Chapter XLVI of the Code.

The Courts may make reasonable advances to witnesses compelled to attend to give evidence when such prepayment is considered necessary.

Notes.—Rule requires Magistrate to pay the expenses of all witnesses summoned under S. 252 Cr. P. C. 1939 M., W. N. 118 Cr. 6.

384-A. It shall be competent to the Court before which a complainant or witness appears to disallow payment of any expenses on behalf of Government, if for any cause to be recorded such Court thinks fit to do so.

384-B. The Court will disallow the whole or part of the expenses of any witnesses for the defence whose evidence may not seem to it to have been material, unless it is satisfied that such witness has been brought to the place in which the Court is situated against his will and that no compensation for his expenses has been paid or deposited by the accused.

385. (1) For the purpose of these rules, witnesses are divided into two classes, namely, of officials and non-officials. Official witnesses, that is to say, public servants to whom the Madras Travelling Allowance Rules are applicable, summoned to give evidence as officials, are entitled to receive for their journeys to and from the Court and for the days spent by them in attendance at the Court to give evidence in cases coming under Rule 384, travelling allowances at the rates prescribed by the Madras Travelling Allowance Rules for the time being in force. The Court shall not, however, make any payment to official witnesses in such cases, but shall grant them certificates setting forth that they appeared to give evidence of what had come to their knowledge, or of matters with which they had to deal, in their official capacity, the date on which they appeared and the period for which they were detained, so as to enable them to draw travelling allowances and batta under the Madras Travelling Allowance Rules.

Exception.—In cases in which a public servant has to give evidence at a Court situate not more than five miles from his headquarters, the Court is authorized, where it considers it necessary, to pay him the actual travelling expenses incurred.

(1-A) When, at the instance of the Crown, a public servant appears before any Court at his headquarters to give evidence in his official capacity he shall not be paid any allowance.

(2) When a public servant appears in his official capacity as a witness in other cases (e.g., in cases in which section 244 (3) or 257, Code of Criminal Procedure, is applied), the party at whose instance he is summoned shall prepay into Court the travelling and halting allowances admissible to him under the Madras Travelling Allowance Rules. The amount so prepaid shall be credited to Government, but the Court shall give the witnesses a certificate containing the particulars specified in sub Rule (1), *supra*, so as to enable him to draw the travelling and halting allowances admissible under Madras Travelling Allowance Rules. When a public servant appears to give evidence in any case as a private person, travelling allowance and batta may be paid to him in the ordinary manner, but the Court shall send an advice of all such payments made to him to the head of the office in which he is employed. In this advice the amount paid as batta and the period during which the attendance of the witness in Court was necessary shall be stated.

Rs. 386—386-C] TRAVELLING ALLOWANCE OF NON-OFFICIAL WITNESSES 81

(3) When an official of the Court of Wards appears in his official capacity as a witness in a case connected with an estate under the superintendence of the Court of Wards the Judge or Magistrate before whom the trial takes place with furnish such official with a certificate showing the days on which he attended to give evidence and the amount of batta and travelling allowance paid to him on that account

(4) When a public servant whose emoluments are governed by the Army Regulations, India, appears in any case under sub-rule (1) to give evidence in his official capacity, he shall be paid the travelling allowance and batta admissible under these rules, and shall be furnished with a certificate showing in detail the amount paid. If the amount paid is less than the amount admissible to him under the military rules to which he is subject the difference will be paid to him by the military authorities on production of the certificate

(5) When Engineers and Health Officers lent to local boards and municipalities attend Court to give evidence in their public capacity and not either in their private capacity or in a prosecution instituted by the local body they shall be paid travelling allowance and batta from provincial funds at the same rates as would be admissible to Government servants of similar grades under the Madras Travelling Allowance Rules.

386. Medical subordinates in Local Fund or Municipality, including
 Medical witnesses of Government servants lent to, and paid by, local Local Fund or Municipal bodies when attending Court to give evidence in their employ. public capacity shall be paid the same rates of travelling allowance and batta as would be admissible to Government servants of similar grades under the Madras Travelling Allowance Rules

Provided that in the case of medical subordinates employed by local boards and municipalities on a monthly pay of Rs 50, and not exceeding Rs 60, the rates of travelling allowance and batta admissible shall be those allowed to Government servants belonging to Grade XII of the Madras Travelling Allowance Rules.

Notes.—Compounders, midwives and nurses in Local Fund and Municipal employ will be treated as Medical Subordinates for purposes of this rule.

386-A. Rural Medical Practitioners when attending Court to give evidence
 Rural Medical Practitioners shall be paid the same rates of travelling allowance and batta as would be admissible to Government servants belonging to Grade IX of the Madras Travelling Allowance Rules [P. Dis No. 285 of 1939.]

386-B. Honorary Medical Officers when attending Court to give evidence
 Honorary Medical Officers in their official capacity shall be paid the same rates of travelling allowance and batta as would be admissible to Government servants belonging to the respective grades of the Madras Travelling Allowance Rules, as set out below.—

Honorary Surgeons and Honorary Physicians. Grade IV.

Honorary Assistant Medical Officers, Grade V (G. O. No. 2009, Home, dated 1st May 1940.)

386-C. When an employee of the Central Government or a State Railway
 Employees of Central Government or State Railway. appears to give evidence in his private capacity, the sum due to him as subsistence allowance or compensation shall be credited to the Central Government or State Railway concerned and no payment on account of subsistence allowance or compensation shall be made to him. (G. O. No. 1718, Home dated 4th April 1941.)

387 Non-official witnesses are entitled to travelling allowances under Travelling allowance of the scale permissible to different classes shown below non-official witnesses.

The Judge or Magistrate shall fix the class of persons who are required to appear before him either as witnesses or complainants, with due regard to the station in life which they occupy. No person shall be declared as belonging to the "special class" mentioned below, and be permitted to draw the rates admissible for that class except for special reasons to be recorded by the Judge or Magistrate —

Class of witnesses.	Travelling allowance by rail.	Travelling allowance by public motor service.	Travelling allowance by road otherwise than by public motor service.	Travelling allowance by sea or canal	Batta not to exceed.
Special class	1st class fare	1st class fare.	As 8 per mile	Actual expenses of passage	Rs. 3 per diem*
I	1st class fare.	1st class fare	As 6 per mile	Do	{ Re. 1 per diem As 8 per diem. As 5 per diem
II	2nd class fare	2nd class fare	As 2 per mile		
III	3rd class fare	3rd class fare.	3 pies per mile		

Provided that for the duration of the present War second class witnesses attending Criminal Courts shall be allowed batta at the rate of 12 annas per day and third class witnesses shall be allowed batta at the rate of 8 annas per day and travelling allowance at the rate of 4 pies per mile for journeys by road otherwise than by public motor service [P Dis No. 204 of 1944]

387-A. All subordinate Magistrates in the mufassal granting special class submission to District or rates for witnesses appearing before Courts in the Sub Divisional Magistrate city or the mufassal or furnishing certificates for special class under Rule 371 of the rules applicable to the City of Madras should submit copies of their orders or certificates to the District Magistrate or the Sub-Divisional Magistrate as the case may be

388 In cases within Rule 384 the Commissioner of Police may make reasonable advances to witnesses resident in the city of Madras who are summoned by a Criminal Court in the mufassal and who require the advances to enable them to reach the Court. The Court issuing the summons on being advised by the Commissioner of Police of the advances made, will refund the amount to him

389 The distance for which mileage and the number of days for which Determination of mileage and batta. batta should be allowed for the journey to and from the station at which the Court is held, and for attendance at Court shall be determined by the Judge or Magistrate ordering the payment in each case

390. All bills for travelling allowance and batta to complainants and witnesses attending before the Courts of Magistrates as the second and third class shall after payment has been made by such Courts be scrutinized by the Magistrate of the Division in which such Courts are situated before the charges included in them are finally passed to the Accounts Department for adjustment.

No compensation when complaint is dismissed under section 250, Cr. P. Code.

391. Whenever a Magistrate dismisses a case as frivolous or vexatious, under section 250 of the Code of Criminal Procedure, no travelling allowance or batta shall be granted to the complainant.

392 Criminal Courts are authorized to pay the necessary and actual Carriage expenses. expenses of carriage to a witness travelling by road, in the case of persons whose sickness, age, position or habits of life render it impossible for them to walk, provide the expenses incurred under this rule shall in no case exceed annas eight a mile

393 To Indians and Europeans graded in the first class of non-officials Carriage hire of first-class non-officials there may also be allowed the actual cost of carriage hire to and from Court on the days of attendance at Court.

Applicability of city rules.

394. Rules 368-A and 380 to 383-B are also applicable to mufassal Courts

EXPENSES OF JURORS AND ASSESSORS

395 Persons attending a Court of Session or the Court of a Magistrate in the mufassal as jurors or assessors who have to travel more than five miles in order to reach the Court house shall be entitled to receive travelling allowance for their journeys to and from the Court-house and batta for the period of their attendance, at the rates fixed for witnesses of the third class in Rule 387, Sessions Judges will however have a discretion to allow second class fares in suitable cases. If jurors and assessors are public servants, to whom the Madras Travelling Allowance Rules are applicable, they shall be entitled to receive travelling allowance and batta at the rates admissible to them under the said Madras Travelling Allowance Rules and not otherwise, and payments shall be made to them in the same manner as to official witnesses under Rule 385 (1). All jurors and assessors who are required by a Sessions Judge or by a Magistrate to travel more than five miles from the Court-house to visit the scene of an alleged offence shall be entitled to receive their actual expenses for such journey

Provided that for the duration of the present war, travelling allowance and batta at the following rates shall be paid to non-officials attending a Court of Session or the Court of a Magistrate in the mufassal as jurors or assessors who have to travel more than five miles to reach the Court-house.—

1. Travelling allowance by rail Intermediate class, if it exists or second class, if so certified in both cases, otherwise third class
2. Travelling allowance by bus Actual bus-fare-lower grade
3. Travelling allowance by sea or canal Actual expenses of passage
4. Travelling allowance by road otherwise than by bus Two annas per mile.
5. Daily allowances Not to exceed 12 annas a day. [P. Dis. No. 428/4].

395.A. When an employee of the Central Government or a State Railway appears to serve as a juror or assessor, the sum due to him as subsistence allowance or compensation shall be credited to the Central Government or State Railway concerned and no payment on account of subsistence or compensation shall be made to him. (G O. No. 1713, Home dated 4th April 1941.)

CHARGES FOR CONVEYANCE OF PRISONERS

396, The cost of conveyance of prisoners to and from the Court is to be recovered by the jail authorities from the Court before, which the attendance of the prisoner is required.

397. As regards charges connected with the sending of European British subjects to the High Court at Madras for trial for offences committed in Madras States, the Madras Government defrays the expenses of the prosecutors and witnesses, while the Government of the State concerned defrays the expenses incurred in producing the accused.

BATTA TO ACQUITTED PRISONERS

398 Courts of Session and District and Divisional Magistrates are authorized to grant to persons who have been acquitted or discharged and released from custody by them, and to persons who having been arrested under section 427 of the Code of Criminal Procedure, are subsequently released, **batta** and travelling expenses at the rates prescribed for third-class witnesses to enable them to return to their villages provided that such prisoners reside at a distance of more than ten miles from the place where they are released from custody and are not possessed of sufficient means to return to their villages

398-A. Courts of Session and Magistrates are authorized to grant to persons released under section 562 of the Code of Criminal Procedure, 1898 or under the Madras Probation of Offenders Act, 1936, **batta** and travelling expenses at the rates prescribed for third-class witness to enable them to return villages provided that such persons reside at a distance of more than ten miles from the place where they are released from custody and are not possessed of sufficient means to return to their villages [P. Dis No 338 of 1939].

CHAPTER XV MISCELLANEOUS
WEARING OF UNIFORM IN COURT

399. The following instructions for the dress of officers and soldiers appearing before the Criminal Courts, which have been approved by the Central Government are reproduced for general information [P. Dis No. 409 of 1941]

(1) An officer or soldier required to attend a Court in his official capacity should appear in uniform, with sword or sidearms Attendance in an official capacity includes attendance —

(a) as witness, when evidence has to be given of matters which come under the cognizance of the officer or soldier in his military capacity,

(b) by an officer for the purpose of watching a case on behalf of a soldier or soldiers under his command

(2) An officer or soldier required to attend a Court otherwise than in his official capacity may appear either in plain clothes or uniform

(3) An officer or soldier shall not wear his sword or sidearms if he appears in the character of an accused person or under military arrest, or if the presiding officer of the Court thinks it necessary to require the surrender of his arms in which case a statement of the reasons for making the order shall be recorded by the presiding officer, and, if the military authorities so request, forwarded for the information of His Excellency the Commander-in-Chief

(4) Firearms shall under no circumstances be taken into Court.

400 The following extract from the King's Regulations is also published for general information

In a Criminal Court an officer or soldier will remove his head-dress while the Judge or Magistrate is present, except when the officer or soldier is on duty under arms with a party or escort inside the Court

DRESS OF CONVICTS APPEARING BEFORE THE HIGH COURT
OR COURT OF SESSION

401. The following instructions have been issued by Government in regard to the production of convicts before Criminal Courts —

Convicts sent in custody to the High Court or to a Court of Session to undergo trial in cases triable by jury shall wear ordinary private clothing; their neck tickets and ankle rings shall also be removed

FORMS OF ADDRESS

402. Head Constables, Sub-Inspectors of Salt and Excise Department and Foresters of the Forest Department should be addressed in the honorific plural and should, like pleaders, be allowed a seat when conducting cases in Court.

402 The undermentioned forms of address selected or equivalent respectively to 'Mr' and 'Esquire' will be used in all official correspondence in the case of Indian functionaries who, by virtue of their office under Government or under Local Bodies would be addressed as "Mr" or "Esquire" if they happen to be Europeans or Anglo Indian, viz. —

(1) The incumbents of all appointments made and gazetted by the Government or of appointments, the pay, or the maximum of the scale of pay of which exceeds Rs. 100 a month incumbents of Legislature not entitled to the honorific "Hon'ble", Honorary Magistrates and members of local bodies other than Panchayats, will, if,

(a) Muhammadans bear the affix 'Sahib Bahadur',

(b) Indian Christians who bear European names the affix "Esquire" and

(c) others bear the prefix "Sir".

(2) The incumbents of appointments not made and gazetted by the Government, who do not come under item (1) above other than members, and members of Panchayats, will if

(a) Muhammadans bear the affix 'Sahib'

(b) Indian Christians who bear European names the prefix "Mr", and

(c) others the prefix "Sir"

Note.—(1) Indian gentlemen holding the office of a Justice of the peace or of a Judge so styled or who are Barristers-at-law are entitled to be addressed as 'Esquire' agreeably to the English usage

(2) The honorific "Esquire" should not be combined with military ranks or with Indian titles, e.g., Diwan Bahadur, Khan Bahadur

404. Gentlemen, who have been admitted by the Inns of Court to the degree of Barrister-at-Law are, if they desire it, entitled to be addressed by the English title of Esquire. The same address may be used in the case of gentlemen who have been enrolled as advocates of the High Court

405. With a view to obviate the misunderstandings and complaints which have been frequent regarding the forms of communications between Judicial officers and between these and officers of other departments the Government with the concurrence of the Judges of the High Court, directs— [P. Dis No. 409 of 1941.]

(1) That correspondence between these classes of officers shall be by letter or in the form of endorsement whenever the endorsement form can conveniently be adopted.

(2) That correspondence between officers of whatever status and department may be by letter or in endorsement form, but the latter should be used whenever it can conveniently be done.

(3) That Sessions Judges shall address Magistrates by proceedings, but the Magistrates shall address Sessions Judges by letter. In communications between Judicial and Revenue officers of one district and those of another district, the form of a letter will in future be adopted, whatever the relative ranks of the addressor and addressee may be.

If the communication be in a vernacular language, those letters of the language should be put together which spell the sound of the English official designation of the officer addressed and the plain plural 'affix' should be used. [A. Dis. No. 409 of 1941].

CHAPTER XV-A. PRESIDENCY MAGISTRATES' COURTS. (SUPPLEMENTARY.)

406. In regard to matters not specifically provided for in this Chapter the provisions in the other parts of the Criminal Rules of Practice and Orders shall so far as may be applied to the Presidency Magistrates.

407. The Chief Presidency Magistrate shall intimate to the High Court Report of assumption of the date of assumption of charge by Salaried Presidency Magistrates on appointment.

408. Honorary Magistrates empowered to sit singly shall ordinarily commence work at 11 a.m. in the forenoon and at 2-00 p.m. in the afternoon.

409. Cases of which a Magistrate has taken cognizance shall, in the absence of a specific order of the Chief Presidency Magistrate to the contrary, be heard by the same Magistrate.

410. All complaints, applications, etc., shall be presented to the Magistrate by a party in person or by his Pleader.

411. Complaints made orally by persons unable to write should be reduced to writing in the presence and under the directions of the Magistrate and read over or interpreted to the party making them.

412. As soon as orders to issue process have been passed upon a complaint it shall be sent to the Chief Clerk of the Court who will furnish the complainant with a notice in P.M. Form No. 3 showing the amount of fees to be paid in Court fee stamps and the latest date of filing or paying them.

413. Where a process fee is paid after the date fixed for payment but before the complaint is dismissed under section 204 (3) of the Code of Criminal Procedure, 1898, a petition to excuse delay giving reasons for such delay shall be filed along with the notice and the Magistrate may pass such orders on the petition as he deems fit.

414. As soon as process fees are paid, the date of hearing shall be fixed and summonses issued to the accused.

415. Omitted

416. Where public servants are cited as witnesses special orders of the Magistrate shall be taken in order to avoid unnecessary summoning and to fix a convenient date for their examination.

417. Every complaint under the Madras City Municipal Act, 1919, shall contain particulars of the fee or other sum of money leviable from accused and the rule or by-law under which such amount is assessed.

418. Every complaint under the Madras City Municipal Act shall also be accompanied by summonses to accused in P. M. Form No. 18 with as many duplicate copies as are necessary. The columns for the date of hearing and the number of the case should be left blank, to be filled in later in the office of the Magistrate.

419. Facsimile impressions in attestation of a complaint or for any purpose not specifically authorized by or under any law shall not be accepted.

420. Where fresh summonses are ordered the original and duplicate copies of such summonses shall be filed by the Madras Corporation in the office of the Magistrate within a week from the date of order.

420-A A register showing the details of process issued and the amount of batta paid to witnesses for the prosecutions instituted by or behalf of the Corporation of Madras shall be maintained in P M Form No 75 and the cost of the prosecution shall be recovered by short duration from the annual payment made to the Corporation on account of compensation in lieu of magisterial fines.

421. Every application or motion for adjournment of a case on the list should be made as soon as the Courts sit for the day to enable the Magistrates to settle the work for the day and get additional cases, if necessary, on their lists by an order of transfer by the Chief Presidency Magistrate.

422. The Chief Clerks and Interpreters of the Courts are under section 68 (1) of the Criminal Procedure Code, 1898 authorized to sign summonses.

423. When any provision of law or rule requires that a document should be sealed, summonses be sealed with the seal of the Court, this shall be effected by affixing thereon the seal authorised for the Court and not by having a seal printed as a part of the form.

Note—The following is reproduced for convenient reference—

ACT IV OF 1877—28th FEBRUARY, 1877

An Act to regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency Towns :

Sections 1 to 55—*Repealed*,

Section 57.—A fee of 8 annas shall be paid for every summons or warrant issued by a Presidency Magistrate except in the case of a summons to attend and give evidence or to produce documents, in which case they shall be paid a fee of 4 annas.

Provided that such Magistrate may in any case remit any such fee, if he is satisfied that the complainant is unable to pay the same and shall remit it when the complaint is made by a public servant in the execution of his duty.

Section 58 to end—*Repealed*.

424. The Commissioner of Police, being a Presidency Magistrate *ex officio* under section 7 of Madras Act III of 1888, is empowered to act under section 144 of the Code of Criminal Procedure, 1898.

425. Matters not involving a trial or enquiry but involving merely the collection of amounts recoverable as fines, e.g., application under section 113 (4) of the Indian Railway Act, 1890, shall not be filed as regular cases. They should be entered directly in the register of distress warrants, etc.

426. The Chief Presidency Magistrate is empowered to call for from any other Presidency Magistrate or Bench of Magistrates, remarks by way of explanation for the delay in the disposal of a case.

427. *Register of material objects.*—A register of properties deposited in Court shall be maintained by the cashier.

Each material object should be fully described in the Register.

428. Each material object should have attached or affixed to it a label to show the number of the case to which it relates and the party from whom it has been received or recovered. The label should also bear the number of the item in the property register. The label should be printed in the following form :—

Property register No.....
Case No.....
Name of person from whom received
Address.

429. Omitted.

430. Material objects should not in the absence of special urgency and without the order of a Magistrate be returned to parties, destroyed or otherwise disposed of until the time for appeal or revision has expired or where an appeal or revision is pending, until it is disposed of

431. The Senior Magistrate in charge of the office at the Georgetown Court and the Junior Magistrate in the Egmore Court should satisfy themselves at the end of each quarter that the valuable properties are all intact and endorse in the quarterly returns a certificate that the verification has been duly made.

432. *Register of long pending cases.*—A register of long pending cases will be maintained in each of the Salaried Presidency Magistrates' Court in Form No. 26 (Criminal Register No. 23). No case will be entered in this register except under the written orders of a Salaried Presidency Magistrate.

433. When an honorary Magistrate sitting singly or a Bench of Magistrates not presided over by a Salaried Presidency Magistrate decides to have a case entered in the Long Pending Register, the records will be forwarded with a report to the Chief Presidency Magistrate.

434. *Register of Calendar and Preliminary Register cases.*—Register in Form No. 4 (Criminal Register No. 4) will be maintained in each of the Courts at Georgetown and Egmore and separate numbering shall be assigned to each class of cases, e.g., municipal cases, maintenance petitions, cases relating to Motor Vehicles, S. P. C. A. cases etc.

435. *Register of Inquiries and Trials and Register of Punishments.*—These registers shall be maintained in Form Nos. 7 and 8 (Criminal Registers Nos. 7 and 8) as per instructions relating to them.

436. *Diary Register.*—A diary in P. M. Form No. 63 or 64, as the case may be, shall be maintained for each Court according to the class of offences tried. The diary shall also indicate the daily progress of each case and the reasons for adjournments if any. The entries shall be initialled by the Magistrate on the day to which they relate.

437. *Register of Court-fees.*—A register of Court fees and process fees received shall be maintained in Form No. 12 (Criminal Register No. 12).

438. *Hearing Book.*—This shall be maintained in P. M. Form No. 65 or 66 according to the class of offences entered.

439 and 440—Omitted.

441. *Affirmation Register.*—A register of oaths and affirmations administered shall be maintained in P. M. Form No. 50 in each Court by the Interpreter or the Bench Clerk in attendance.

442. The rules relating to fines apply also to all other moneys such as fees, taxes, etc., that are imposed or assessed by a Magistrate and are recoverable as fines.

443. The imposition of a fine shall irrespective of its collection on the same day, be brought into accounts and entered in the Register of fines immediately.

In the case of fines imposed by the morning Bench Courts, all fines collected in the morning will be entered in a separate register called "Night case Collection Register" P. M. Form No. 74) and its total shall be carried forward to the office main register of fines [P. Dis No. 683 of 1942]

444. Every case in which a fine is imposed and time is granted for payment of the whole or part of such fine should be assigned a date of hearing and as required by section 388 (b) of the Code of Criminal Procedure, 1898, the bonds shall be for appearance of the accused on that date and bonds shall be kept with the records of the cases.

445. Licence fees and taxes recovered under the City Municipal Act which are payable to the Corporation of Madras shall in the first instance be credited to "Criminal Court deposits. On the 5th of each month a repayment order shall be issued in favour of the Commissioner the Corporation of Madras for the amount payable to the Corporation on account of the collections in the preceeding month, [P. Dis No 683 of 1942]

446. Except in cases dealt with under Section 204 (c) 13, 217, 259, 345 and 494 Criminal Procedure Code all Presidency Magistrates shall within 5 days from date of Judgement or order send to the Chief Presidency Magistrate copies of all judgments or orders in the following classes of cases —

Indian Penal Code

Chapter V A. Criminal Conspiracy.

VI. Offences against the State.

VII. Offences relating to the Army Navy and Air Force.

VIII. Offences against Public tranquility (Sections 147 to 158)

IX. Offences by or relating to Public Servants (Sections 161 to 171)

IXA. Offences relating to Elections.

X. Contempt of lawful authority of Public Servants.

XI. False Evidence and offences against Public Justice.

XII. Offences relating to the coins and Government Stamps.

XV. Offences relating to religion.

XVI. Offences affecting the human body (Sections 304A, 317, 318, 324, 325, 326, 327, 332, 335, 344 to 438, 353, to 355, 363, 365, 368, 369, 372 373, 374, and 377)

XVII. Offences against property (Sections 379, to 382, 384, 385, 386 to 384, 401 403 to 411, 414, 417, to 420, 424, 427, to 432, 435; 440, 454 to 458, 461, 462)

XVIII. Offences relating to documents and to trade or property marks.

XX. Offences relating to marriage (Sections 494, 497, 598.)

XXI. Defamation.

XXII. Criminal Intimidation, insult, and annoyance (Sections 504, 506 to

Cases under Special and local Laws.

1. Indian Arms Act 1878 (Act XI of 1878.)
2. Indian Explosives Act 1884 (Act IV of 1884)
3. City Police Act 1888 (Act III of 1888 Sections 37, 45, 46, 64, and 65.
4. Prisons Act 1894 (Act IX of 1894)
5. Defence of India Rules (Warrant cases)
6. Madras Suppression of Immoral Traffic Act 1930 (Act V of 1930)
7. Opium Act (Act I of 1878).
8. Dangerous Drug Act 1930 (Act II of 1930).

Criminal Procedure Code All proceedings under Section 107' 109, 110.

Copies of Judgments and orders sent under this rule shall be accompanied by the information given in the tabular P. M. Form 69.

The Chief Presidency Magistrate shall make a register of Calendars received in his office in P. M. Form 70 P. [Dis No 71 of 1943.]

447. Every Presidency Magistrate shall submit to the Chief Presidency Magistrate in P. M. Form 71 a statement showing the number of cases pending in his Court not later than the seventh day of the month following that to which the statement relates. (P. Dis No 71 of 1943).

448. "A register of payment of batta to witnesses in Crown cases shall be maintained in P. M. Form No. 73 and the daily payments carried over to the "Daily Cash Balance Register" (P. M. Form No. 60).

449. (1) An index in P. M. Form No. 25 shall be put up with the record of every case on its first institution and each paper as it is filed with the records shall be entered in such index except in the following cases :

(a) All cases instituted in Bench Courts and Juvenile Courts.

(b) Cases under the Madras Traffic Rules 1938, the Prevention of Cruelty to Animals Act 1890, the Madras City Police Act, 1888 (except those falling under Sections 37, 45, 53, and 65) (the Madras City Municipal Act, 1919) the Madras Prevention of Adulteration Act, 1918, the Madras General Sales Tax Act, 1939, the Madras Tobacco (Taxation of sales and Licensing) Act, 1939, the Madras Hackney Carriage Act, 1911, the Indian Railways Act, 1890; and the Madras Motor Vehicles Taxation Act, 1931.

(2) Every record shall, after its completion, and immediately before it is deposited in the record room be checked with the index, and the bundle arranged and stitched together.

(3) All case records shall be destroyed at the end of the periods mentioned in Table C of Administrative Norm No. 58 against Part I after notifying in the Port St. George Gazette in January of each year that all exhibits filed in the case will be destroyed along with the records if they are not taken delivery of within a month of the publication of the notification.



A HANDBOOK OF CRIMINAL LAW

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